COSTS—NEW COUNTY COURT RULES p. 1024

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The Solicitors' Journal

VOL. LXXX. **Saturday, December 26, 1936.** No. 52

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Current Topics.

Succession to the Crown.

NOT a few constitutional lawyers and others appear to be much exercised over the question, by no means academic merely, whether in the event of a demise of the Crown, leaving no male heir, but two heiresses, the elder is entitled to succeed to the exclusion of the other. Probably most people considered that the question of the succession to the Throne had been settled for all time by the Act of Settlement, which was passed in 1700 " for the better limitation of the Crown," but, like other legislation, that notable landmark in our national history failed to provide for every contingency, and made no specific provision for such an eventuality as that now visualised, the ultimate destination of the Crown being merely to PRINCESS SOPHIA OF HANOVER " and the heirs of her body, being Protestants." In the absence of specific provision on the point, and in the event of the monarch leaving no male heir, but two or more heiresses, is the Crown to go to the eldest to the exclusion of the younger ? This question is learnedly and interestingly discussed by a writer in *The Times* of the 19th inst., where the conclusion is reached that " on highly artificial lines " it is possible to construct a case for regarding the PRINCESS ELIZABETH as sole heir-presumptive to the Throne. We are reminded however that as under the Statute of Westminster, 1931, equal rights are conferred upon the Dominions, and as these would include the right to interpret the scope of the Act of Settlement, it would be prudent in view of a possible divergence of view, to pass a new Succession Act declaring whither, in default of male heirs to His Majesty, the Crown is to pass. This, it is strongly urged, should be done without delay.

Trunk Roads and Safety.

DURING the recent debate in the House of Lords on the Trunk Roads Bill a considerable difference of opinion on the effect of the measure in regard to the problem of road safety was manifested. Regrets were expressed by more than one speaker that a more definite line had not been taken in the matter. LORD PONSONBY said there was only a minor reference in the Bill to road safety. He considered that the great trunk roads which were to be made broader and broader were in themselves one of the major dangers which brought about accidents. The Minister of Transport (for whose efforts he expressed great admiration and with whom he had every sympathy as he had with any conscientious failure) was helping with one hand those speedways, and with the other trying to check the terrible toll of the roads. VISCOUNT CECIL regretted there was nothing about safety in the Bill and agreed that the present Minister of Transport had done his best from his own point of view. He thought that recklessness caused a certain number of accidents and that speed in a sense was the cause of accidents, but the main cause was that they were trying to use the same roads for traffic going at four or five miles an hour and traffic going at sixty or seventy miles an hour. There must, it was urged, be fast roads and slow roads. On the latter the traffic must be brought down to a speed of twenty or thirty miles an hour, while the former would have to be treated as railways. Something of that kind was essential. We alluded to the desirability of some such plan in these columns a few weeks ago. If a really adequate system of high-speed roads could be provided throughout the country—and the Trunk Roads Bill gives, for the first time, an opportunity for the planning of such on a comprehensive basis—roads now used as speedways and unadapted for such purposes would be relieved of much of their dangers and the imposition upon them of a limit suitable to their capacity would, it is thought, meet with less opposition than at present would be the case. VISCOUNT SWINTON, Secretary of State for Air, said the safety on the roads was profoundly present in their minds. It could not be otherwise. The toll of the roads was quite terrible. The speaker had, indeed, often felt safer in the air than on the roads when travelling at week-ends. But, he urged, the Bill would be the foundation for greater safety.

Roadside Amenities.

ANOTHER aspect of the problem, less urgent than that just considered but far from negligible, was touched upon in the debate just referred to, namely, the probable effect of the Bill upon the countryside. The last speaker observed that a road that was uniform in size need not necessarily be hideous. Much had been done to make the roads more attractive, and it would be the aim of the Minister of Transport, while making the roads uniform where that was necessary, to make them as attractive as might be. The Minister of Transport had, it was said, stated he would be glad on all appropriate occasions to consult with the Council for the Preservation of Rural England. The EARL OF CRAWFORD said that there had been cases where road widening had been

a very casual process; where it had been wasteful because it destroyed valuable property, deplorable because it wiped out beautiful property, and where at best it was unsatisfactory as being no more than a compromise. Ribbon development could, he continued, be controlled on by-pass roads by the exercise of the powers already given. He urged that the characteristics of the countryside should be respected, and that it was a pity that the roads should be modelled on the railways. In regard to the solution of the problem it may be pointed out that, as the chairman of its Technical Committee has recently reminded readers of *The Times*, there is a Roads Beautifying Association, of which the Minister of Transport is himself vice-patron, which exists for the purpose of advising public bodies on such questions as the planting of verges and other roadside amenities and has been carrying out this work for some years. In another recent letter to *The Times* it is urged that the Council for the Preservation of Rural England has been concerned with road problems from the outset and that the subject is not one that can be excluded from the Council's active concern, raising as it does all aspects of town and country planning, of layout, siting, engineering, view points, litter, advertising, petrol stations, by-pass and road widening, housing and ribbon development. Both these letters exhibit a desire for co-operation which is obviously desirable in face of the common danger of despoliation. In any event there would appear to be no lack of advisers whose aid the Minister of Transport could enlist in achieving a result which would have the support of all persons of imagination and goodwill.

New Law, 1937: Statutes.

THE attention of readers is drawn to the following statutes, and portions of statutes, which come into operation on 1st January, 1937:—

THE EMPLOYMENT OF WOMEN AND YOUNG PERSONS ACT, 1936.—This Act authorises, with safeguards, the continuance of the two-shift system permitted under the temporary provisions of the Women and Young Persons Act, 1920, which is repealed. The Act, which was originally to have come into force on 1st July, was postponed by an amendment accepted during the Report stage so as to operate from 1st January next.

THE SHOPS ACT, 1936.—The purpose of this statute is to provide for the application of the Shops Acts, 1912–1934, to premises and places where the business of lending books and periodicals is carried on for purposes of gain. Subject to conditions laid down in s. 1 (3) (*a*) (*b*) and (*c*) the new statute does not apply the Shops Acts to any library which on 1st January, 1936, was carried on by a society registered under the Industrial and Provident Societies Acts, 1893–1928, mainly for the purpose of affording to its members means of education and recreation.

THE RETAIL MEAT DEALERS' SHOPS (SUNDAY CLOSING) ACT, 1936, the object of which is to provide with certain exceptions (*ibid.*, s. 2), for the compulsory closing of retail meat traders' shops and stalls on Sundays.

THE NATIONAL HEALTH INSURANCE ACT, 1936.—A lengthy statute of 229 sections and six schedules consolidating the law in regard to national health insurance.

THE OLD AGE PENSIONS ACT, 1936, consolidates enactments relating to non-contributory old age pensions.

THE WIDOWS', ORPHANS' AND OLD AGE CONTRIBUTORY PENSIONS ACT, 1936, effects a similar consolidation in regard to contributory old age pensions and widows' and orphans' pensions, and is to be read with the National Health Insurance Act, 1936.

THE SOLICITORS ACT, 1936.—The Act, as readers know, amends Pt. II of the Solicitors Act, 1932, in regard to articles of clerkship and examinations, and contains also a number of miscellaneous amendments to the same Act. The new provisions were explained in detail by Mr. H. A. DOWSON in the course of his presidential address at the provincial meeting of The Law Society of Nottingham last September (80 SOL. J. 758).

THE HOUSING ACT, 1936.—This consolidates the Housing Acts of 1925, 1930 and 1935, and certain other enactments relating to the subject and provides within the compass of its 191 sections and twelve schedules a substantially complete code of existing housing law.

THE FINANCE ACT, 1936, ss. 9 and 11.—The first of these sections provides that no duty shall be payable under s. 13 of the Finance Act, 1920, in respect of vehicles (including cycles with an attachment for propelling them by mechanical power) which do not exceed five hundredweight unladen and are adapted and used for invalids. Section 11 provides that for the purpose of para. 5 (*d*) of the Second Schedule to the Finance Act, 1920 (which as amended by the Seventh Schedule to the Finance Act, 1933, imposes an additional duty on goods vehicles used for drawing a trailer), a farm implement not constructed or adapted for the conveyance of goods or burden of any description shall not be deemed to be a trailer when drawn by a goods vehicle chargeable with duty under sub-para. (*a*) of the paragraph aforesaid.

THE PUBLIC ORDER ACT, 1936.

—Rules and Orders.

THE following rules and orders which may conveniently be grouped as hereinunder also operate from 1st January next:—

COUNTY COURTS.—The County Court Rules, 1936 (S.R. & O., 1936, No. 626 L/17), the County Court Fees Order, 1936 (S.R. & O., 1936, No. 1160 L/17), the County Court Districts (Name of Court) Order, 1936 (which simplifies the names of certain county courts—see 80 SOL. J. 935), and the High-Bailiff Court Order, 1936, for the contents of which reference may be made to 80 SOL. J. 958.

SOLICITORS.—The regulations made by The Law Society under s. 26 of the Solicitors Act, 1932, and s. 8 of the Solicitors Act, 1936 (80 SOL. J. 903 and 918), with regard to Articled Clerks.

REGISTRATION OF TITLE.—By Order in Council under s. 120 of the Land Registration Act, 1925, registration of title to land is to be compulsory on sale in the Administrative County of Middlesex on and after 1st January (80 SOL. J. 859). The draft Land Registry (Middlesex Deed) Rules, 1936, and the Registration Rules under s. 144 of the Land Registration Act, 1925, are set out in our issue of 28th November last (80 SOL. J. 957) and at p. 1039 of this issue respectively.

RESTRICTION OF RIBBON DEVELOPMENT ACT, 1935.—By virtue of the Order made by the Minister of Health under s. 20 (3) of this Act, referred to in our issue of 24th October (80 SOL. J. 842), the London County Council will be invested with the powers contained in s. 17 of the Act relating to the requirement of the provision of suitable means of entrance and egress as a condition of approval of building plans.

MOTOR VEHICLES.—Regulation 14 of the Motor Vehicles (Construction and Use) Regulations, 1931 (S.R. & O., 1931, No. 4), which requires windscreens or front outside windows, except in the case of an upper deck of a double-decked vehicle, to be of safety glass, applies to all vehicles from 1st January, when the operation of the saving clause relating to vehicles registered on or before 1st January, 1932, expires. A similar saving clause in regard to parking brakes on land locomotives expires at the end of the present year (*ibid.*, reg. 8). The Heavy Goods Vehicles (Drivers' Licences) Regulations, 1936 (S.R. & O., 1936, No. 1244), which provide, *inter alia*, for the issue of licences limited to vehicles of one or more classes.

HOUSING.—By the Housing Act, 1935 (Operation of Overcrowding Provisions) Order, 1936 (S.R. & O., 1936, No. 665), 1st January, 1937, is the "appointed day" for the districts set out in the order for the purposes of ss. 3, 4 and 8 of the

Housing Act, 1935, now ss. 59, 60 and 64 of the Act of 1936. These sections relate to overcrowding. By the same order, the "appointed day" for the purposes of s. 6 of the Act of 1935 (now s. 62 of the Act of 1936), was the 1st July, 1936. As from six months thereafter, i.e., 1st January, 1937, rent books must contain the prescribed notice as to overcrowding.

County Court Rules, 1936: Service of Documents.

We are given to understand that a new Rule will shortly be published amending Ord. VIII, r. 2 (*b*) (iii) of the County Court Rules, 1936, by substituting the words "some person employed by either Solicitor to serve the document" for the words "some person in the permanent and exclusive employ of either." This amendment, it is understood, will operate from 1st January, 1937. Difficulties likely to arise from the Rule in its present form, which must have been present to the minds of many of our readers, were suggested in a letter appearing in our correspondence column on 24th October (80 Sol. J. 857).

Recent Decisions.

In *Stafford* v. *Kidd* (*The Times*, 10th December) the Court of Appeal reversed a decision of justices and held that a separation deed had the same effect as a judicial separation in getting rid of the presumption of legitimacy and allowing evidence to be given in bastardy proceedings by a wife, though such evidence would tend to bastardise the child. The rule in *Russell* v. *Russell* [1924] A.C. 687, did not apply to such a case. See *Mart* v. *Mart* [1926] P. 24; *Rimmer* v. *Rimmer*, 46 T.L.R. 624. *Re Bromage; Public Trustee* v. *Cuthbert* [1935] Ch. 605, not followed on this point.

In *Rex* v. *North* (*The Times*, 15th December) the Court of Criminal Appeal dismissed an appeal from a conviction of murder. The Lord Chief Justice stated the conditions which had to be satisfied before a defence of insanity was made out, and intimated that in a case such as the present, in which there was no evidence on which a verdict of insanity could rightly be based, it was properly within the province of a judge to tell the jury so in terms and to withdraw that suggested defence from them. In the case in question the judge would have failed in his duty if he had allowed the jury to entertain such a defence.

In *Rex* v. *South-Eastern Traffic Commissioners: ex parte Valiant Direct Coaches Ltd.; Same* v. *Minister of Transport; ex parte Same; Same* v. *South-Eastern Traffic Commissioners: ex parte Same* (*The Times*, 17th December), the court discharged rules *nisi* for certiorari obtained at the instance of Valiant Direct Coaches and directed to the Minister of Transport and the South-Eastern Traffic Commissioners, and a rule *nisi* for mandamus directed to the latter. The first rule for certiorari related to an order by the Minister of Transport directing deletion of an enabling proviso in regard to the issue, under conditions, of single tickets for inward journeys to the Metropolitan Traffic Area which was forbidden by the conditions of the applicants' seasonal licences. A second rule related to the South Eastern Traffic Commissioners, who on application for renewal of the licences, considered themselves, in the absence of special circumstances, bound to issue the same without the enabling proviso. Lord Hewart, C.J., referred to *Rex* v. *Yorkshire Traffic Commissioners* (unreported), which was heard by a Divisional Court and the Court of Appeal in April and October, 1933 respectively, the effect of which was that commissioners of a traffic area in which the backing of a licence was asked for were enabled to impose a condition affecting the extent or nature of a licence not only in their own area but also in the area in which it was granted (see Road Traffic Act, 1930, s. 73 (2)).

The Court of Appeal (*The Times*, 17th December) dismissed an appeal from the judgment of Bucknill, J., in *The Kafiristan*, referred to in this column in our issue of 28th November (80 Sol. J. 943).

In *Townley Mill Co.* (1919) *Ltd.* v. *Oldham Assessment Committee* (*The Times*, 18th December), the House of Lords reversed a decision of the Court of Appeal and restored that of a Divisional Court to the effect that where a cotton mill was closed, the whole of the plant and machinery being maintained in position and one person being employed thereat for the purpose of maintaining the same in repair and good condition, no regard could be had to the value of that plant and machinery in assessing the mill for rating purposes. Contrary to the Court of Appeal, it was held that s. 24 (1) of the Rating and Valuation Act, 1925, applied to the case.

In *Forbes* v. *Attorney-General for Manitoba* (*The Times*, 18th December), the Judicial Committee of the Privy Council upheld a decision of the Supreme Court of Canada to the effect that a provision of the Special Income Tax Act, 1933 (23 Geo. V, c. 44 (Manitoba)), whereby a tax of 2 per cent. was imposed on wages, was within the competence of a Provincial Legislature of the Dominion of Canada in regard to a Dominion civil servant, and that the said tax applied to him in the same manner as it applied to other persons within the Province.

In *Kandegedera* v. *The King* (*The Times*, 18th December), where it was alleged that a special police guard ordered by the judge at the Supreme Court of Ceylon (as a result of a rumour that the accused and his brothers were desperate criminals, armed with firearms and capable of any mischief) and a cordon of police placed round the dock were calculated to prejudice the accused in the minds of the jury, the Judicial Committee of the Privy Council dismissed the petition for special leave to appeal *in forma pauperis* from a conviction and sentence of death for the murder of eight persons.

In *Admiralty Commissioners* v. *Owners of M.V. Valverda* (*The Times*, 18th December), the Court of Appeal (Slesser and Scott, L.JJ., Greer, L.J., dissenting) reversed a decision of Branson, J., and held that the court had no jurisdiction to entertain a claim for salvage services rendered by ships of His Majesty's Navy and excluded by s. 557 (1) of the Merchant Shipping Act, 1894. The shipowners appealed against the award of an arbitrator in favour, subject to the opinion of the court, of the Admiralty in respect of services rendered to an oil tanker in distress in the Atlantic, and maintained that the Admiralty was prohibited from claiming, and that the position was not altered by the existence of a salvage agreement between the parties.

In *Attorney-General* v. *Cohen and Another* (*The Times*, 19th December), the Court of Appeal (Slesser and Greene, L.JJ., Romer, L.J., dissenting), upheld a decision of Lawrence, J., to the effect that the purchase by the respondents by separate bids at a public auction from the same vendors of a number of properties sold in lots did not constitute a series of transactions within the meaning of s. 73 of the dinance (1909–1910) Act, 1910, so as to render stamp duty payable at the higher rate on such of them as were within the £500 limit prescribed by that section. Each lot was, the Court of Appeal held, genuinely the subject of a separate contract and an arbitrary coincidence of time or place did not constitute such interdependence as to form a series.

In *Re A Debtor: No.* 627 *of* 1936 (*The Times*, 19th December), the Court of Appeal upheld a decision of the bankruptcy registrar who refused to make a receiving order against a married woman who was not a trader on the petition of a guarantor. The guarantee, which was in respect of a bank overdraft, was entered into prior to the coming into operation of the Law Reform (Married Women and Tortfeasors) Act, 1935. The bank called in the guarantee thereafter and the guarantor obtained judgment against the debtor for the sum paid. The judgment, it was held, was in respect of an obligation incurred when the guarantee was entered into (and not when the guarantor paid the bank), and hence the position was unaffected by s. 1 (*d*) of the above-named Act (see *ibid.*, s. 4 (1) (*c*)).

Costs.

NEW COUNTY COURT RULES—(*continued*).

We have now dealt briefly with a few of the most important points arising out of the new rules themselves, and we can turn to a consideration of the scales.

The first important alteration that we must notice is that the lower scale itself is now sub-divided into two separate scales under the headings of columns 1 and 2. Column 1 applies where the sum involved exceeds £2 and does not exceed £5. Where the sum involved exceeds £5 but does not exceed £10 then column 2 will apply.

As we explained in our last article, the scale of costs applicable to the plaintiff will be determined by the amount recovered, and that applicable to the defendant by the amount claimed. One is inclined to wonder whether, if the scales are to apply as well between solicitor and client as they do between party and party, the rule that the amount recovered is to regulate the plaintiff's solicitor's costs, and the amount claimed the defendant's solicitor's costs, will operate in a case where the amount recovered is less than the amount claimed.

In this connection we have in mind the case of *Langlois and Biden* [1891] 1 Q.B. 349. In this case it was held that where a plaintiff claimed a sum exceeding £10 but recovered something less than that amount, his solicitor, on a solicitor and client taxation, was entitled to his costs on the higher scale, notwithstanding that the party and party costs were recoverable only on the lower scale. It would seem from this case, although the point has not been before the courts, that the solicitor to a plaintiff who has put forward a claim for an amount of £55, although only £25 is ultimately recovered, would be entitled to charge his client under Scale C, although he would recover from the unsuccessful defendant costs under Scale B only.

This is a point that is left undecided by the wording of r. 6 of Ord. 47, to which we have referred above; and the further question arises whether the unsuccessful defendant's solicitor's costs in the example cited above should not be regulated by Scale C rather than by Scale B, notwithstanding that the costs that he will pay to the successful plaintiff will be regulated by the latter scale. We offer the opinion with diffidence, but this certainly does seem to be the proper interpretation of r. 6 (*supra*) of the new rules.

Except in regard to the form in which it is set out, there is no revolutionary change in the lower scale itself. Thus, for preparing the particulars of claim and making the necessary copies the charge is 4s. where the amount involved is between £2 and £5, and 8s. where the amount is between £5 and £10. For preparing for and attending the trial the plaintiff's solicitor is entitled to 7s. where the amount involved is between £2 and £5, and 10s. where the amount is between £5 and £10. The defendant's solicitor is entitled to 10s. and 15s. respectively for instructions, preparing defence, and attending the trial. Both the plaintiff and defendant's solicitors' fees under this heading may be increased to £1 where the amount involved is between £2 and £5, and to £2 where the amount involved is between £5 and £10. If the case so warrants, and the judge certifies that it is fit for counsel, then the solicitor for either party will be entitled, in addition to the charges mentioned above, to 3s. 4d. for instructions for brief, a maximum of 5s. for drawing the same, and 3s. 4d. for attending counsel with the brief. These latter fees are the same whether the amount involved is under or over £5.

Notice in particular that where the amount involved is £2 or less, no solicitor's charges will be allowed unless a certificate is granted by the judge that the determination of the question in dispute was of importance to a class or body of persons, or involved a difficult point of law, or that the decision of the court affects issues beyond those directly involved in the proceedings. This means, presumably, that not only will the solicitor be entitled to no costs against the opposite party, but that he will also be entitled to no costs from his client, at least so far as the action is concerned.

So far as the higher scale is concerned, although there has been no serious alterations to the allowances themselves, there has been a re-arrangement of the items in the scales. The first five items in the scale set out the appropriate charges for preparing particulars of claim or counterclaim, defence, originating applications, answers thereto, preliminary acts in admiralty actions, and particulars. The scale fees, which do not differ essentially from the fees under the old scale, include the preparation of the necessary copies, and there is an important note to the effect that the fees are allowable only where the pleading is signed by the solicitor or his duly authorised clerk. Where, on the other hand, the pleading is settled by counsel, and a fee is allowed to the latter, then, in lieu of the fees allowed under items 1 to 5, there will be allowed a fee of 3s. 4d. under Scale B and 6s. 8d. under Scale C, for preparing instructions to settle,

The fees in the higher scale (columns B and C) are subject to an increase of 33⅓ per cent. under r. 41 of Ord. 47, in the same way as under the old rules, and subject to somewhat similar exceptions.

We do not propose to examine the remaining items in the scale in detail since, as we have observed before, they do not differ materially from the items in the present scale. The greatest difficulty of costs draughtsmen for some time to come will be to accustom themselves to the new numbering of the items.

Two Bankruptcy Decisions.

TIME FOR APPEALING.
FIDUCIARY POSITION OF COMMITTEE OF INSPECTION.

This article considers the decisions in *Re Bulmer: Trustee and Commissioners of Inland Revenue* v. *National Provincial Bank, Ltd.* (1936), 80 Sol. J. 993, and in *Re Bulmer, ex parte Greaves* (1936), 80 Sol. J. 994. The Divisional Court (Clauson and Farwell, JJ.) dealt in these appeals with two bankruptcy points of some interest.

In the first case a secured creditor gave the usual six months' notice to the trustee in bankruptcy to elect under s. 32 and the 2nd Sched., r. 13 (*c*), of the Bankruptcy Act, 1914, the notice expiring on the 30th June, 1935. On the 18th June the trustee gave notice of motion asking for the time to be extended for three months. On the 25th June the county court judge refused to extend the time and ordered the trustee to pay certain costs, as to which a more explicit order was later drawn up, entitling the trustee to be reimbursed out of the estate for these costs. From this order the trustee gave notice of appeal to the Divisional Court, which was out of time if time was running from the original date so as to expire on the 30th June. The appeal to the Divisional Court should, under Bankruptcy Rule 130 as applied to the Divisional Court by the Rules, have been within a period of twenty-one days—

> "... calculated from the time at which the order is signed, or otherwise perfected, or, in the case of a refusal of an application, from the date of such refusal."

The trustee argued that the appeal was not out of time because the refusal by the judge was not a simple refusal in that the fate of the application remained uncertain until the order was finally drawn up and the question of costs finally determined by it. But Clauson, J., with whom Farwell, J. agreed, held that the refusal on the 25th June was a simple refusal, and that the fate of the application was not mixed up with anything else. He did not accept the suggestion that it was reasonable for the appellant to wait and see the order in its final form before giving notice of appeal. There is no prior

reported case decided upon bankruptcy practice; but there are very apt words of James, L.J., in *International Financial Society* v. *City of Moscow Gas Co.* (1877), 7 Ch.D. 241. The court was there construing Ord. LVIII, r. 15, the relevant words of which are almost exactly similar to those quoted above, and James, L.J., said, at p. 244.

> " . . . . where it is necessary for any purpose, in order to enable a man to see what he is appealing from, that the judgment or order should be perfected, so that he may see exactly what is the final form which it takes, and by which he may be aggrieved, then he has a twelvemonth from that time to consider his appeal; but where the application for final judgment or order is simply refused, although refused with costs, he knows exactly the fate of his application and then he has a twelvemonth from the time at which he knows that the order with which he is dissatisfied has been made."

On the other hand, in *Shelfer* v. *City of London Electric Lighting Co.* [1895] 1 Ch. 287, Lindley, L.J., distinguished such a case from the case where a man had " partly succeeded and partly failed, and where the costs are set off, one set against another." In such a case it was only reasonable to wait to see the order as drawn up. Every case must turn upon whether or not it was reasonable to do so. Upon these authorities the court took the view that this was not a case of partial success and that the fact that the order as ultimately drawn up dealt more explicitly with the costs was not a matter justifying the trustee in waiting to see the final form of the order before appealing.

The question involved in the second case was the position of a quasi-member of the committee of inspection who thoughtlessly buys shares forming part of the bankrupt's estate.

At the date of the receiving order the bankrupt was entitled to certain fully-paid shares in a limited company which were all pledged to a bank in the name of a holding company as security for a loan. Early in the bankruptcy a committee of inspection was appointed, of which the company issuing the shares was a member. The appellant had a proxy from the company, and it was he who represented the company on the committee. After considerable lapse of time, the bankruptcy being virtually " dead," partly because the liabilities so vastly exceeded the assets, it was suggested to the appellant, who was trying to resuscitate the company, that he ought to have a shareholding in it. He accordingly purchased from the bank some of the shares held by them as security for their loan. These shares later appreciated and the appellant sold some of them. The Inland Revenue Commissioners now moved to recover the shares and their proceeds of sale and the county court judge ordered them to be transferred.

On the hearing of the appeal the interesting question was raised, whether a company could be a member of a committee of inspection. The county court judge had treated the appellant as such a member, and the Divisional Court did the same, observing that he had voluntarily placed himself in the position of a member, and were also able to decide the appeal on other grounds, leaving this question open. In argument, doubts were expressed by the court as to whether a company could be a member. Section 20 of the Bankruptcy Act, 1914, provides that any " person " who is a creditor or present or future holder of a general proxy or power of attorney from a creditor can be a member, but the Act does not define " person " as including a corporation. Section 149 says that for all or any of the purposes of the Act a corporation may act by any of its officers. From these it would seem that though an individual may be appointed a member by a creditor company, a company cannot itself be a member, and reasons of practical convenience would seem to require the same rule. The absence of any judicial authority upon the point and the doubts expressed in the present case make it unlikely that a company can be a member.

The main point of the decision was the result of the fiduciary position in which the appellant had placed himself. His evidence had been that if he had thought for a moment he would have realised his position, but that owing to the lapse of time and the other circumstances it never occurred to him that there was any objection to his buying the shares. The Divisional Court accepted this, but held that knowledge was irrelevant. If he knew that the shares were part of the estate he would be a trustee of them for the estate from the date of the purchase, subject to a right of lien, and could not retain any profit upon the shares. If he did not know, his liability would be limited to the extent that he would not have to replace such shares as he had realised. The question was whether, on equitable principles, he ought to surrender the shares. The principle has long been clear as appears from the authorities cited in argument and in the judgment. It is well expressed in the headnote to *Aberdeen Rly. Co.* v. *Blaikie* (1854), 1 Macq., 461, a House of Lords Appeal from Scotland, set out in *Costa Rica Rly Co. Ltd.* v. *Forwood* [1901] 1 Ch. 746, at p. 760, as follows :—

> " It is a rule of universal application that no trustee shall be allowed to enter into engagements in which he has, or can have, a personal interest conflicting, or which may possibly conflict, with the interest of those whom he is bound by fiduciary duty to protect. So strictly is this principle adhered to, that no question is allowed to be raised as to the fairness, or unfairness, of the transaction ; for it is enough that the parties interested object. It may be that the terms on which a trustee has attempted to deal with the trust estate, are as good as could have been obtained from any other quarter. They may even be better. But so inflexible is the rule that no inquiry into that matter is permitted."

That the general principle applies to a member of a committee of inspection is clear from the purport of s. 20 of the Act and from Rules 347 and 348 of the Bankruptcy Rules, 1915, which expressly forbid the purchase of any part of the estate or the making of a profit out of his position by any member of the committee without the court's consent. It also appears from ss. 56-58 and s. 79. As Cozens-Hardy, M.R., said of the Act of 1883, as amended—

> " The statute is full of provisions recognising the fiduciary position of members of a committee of inspection and imposing restrictions upon their powers, none of which would apply to a creditor "

(*In re Geiger* [1915] 1 K.B. 439, at p. 447). The reason of the general equitable rule is stated in *Bray* v. *Ford* [1896] A.C. 44, at p. 51, by Lord Herschell. It is not

> " . . . founded upon principles of morality. I regard it rather as based upon the consideration that, human nature being what it is, there is danger, in such circumstances, of the person holding a fiduciary position being swayed by interest rather than duty, and thus prejudicing those whom he was bound to protect."

Thus it clearly appears that if there be the danger of this conflict of interest and duty, it is not necessary to go on to show knowledge of his position on the part of the trustee.

In the result, the county court judge's judgment was affirmed, though the Divisional Court were careful not to express any views outside those strictly necessary to decide the case. Leave to appeal was given, but the Divisional Court, it is respectfully submitted, have correctly applied principles which have long been well settled.

A new court house and office accommodation for the Bromley Petty Sessional Division, erected on the site adjoining the existing premises, were formally opened on the 16th December, and used by the justices for the first time. The building has cost about £23,000. It has three courts, two for ordinary cases and the other—with a separate entrance from the street—for juveniles and the hearing of matrimonial cases.

Company Law and Practice.

Validity of Acts of Unqualified Directors.

I HAVE had occasion previously to consider in these columns some of the questions which arise with regard to the qualification of directors; and it will be remembered that there is no rule of law which requires a director to hold qualification shares, but that if the articles require the holding of a qualification he is bound to acquire the necessary shares within two months after his appointment, or if the articles fix a shorter time than two months, then within that shorter time: see s. 141, Companies Act, 1929. That section also provides that if the shares are not acquired within the necessary time the office of director is vacated, and if after the expiration of the time an unqualified person acts as a director he is liable to a fine. I mention these points again because they are of great importance and do tend to be overlooked; but what I am more concerned with is the question of the validity of the acts of directors who are unqualified.

One might, I suppose, start by saying that as a general rule the acts of unqualified directors are void, but that to this rule there are exceptions. This is not however to my mind a satisfactory method of approaching the question, since in fact the exceptions are usually applicable, and not the rule. Section 143 of the Companies Act, 1929, provides that: "The acts of a director or manager shall be valid notwithstanding any defect that may afterwards be discovered in his appointment or qualification"; and the articles of association of most companies contain a provision similar to that made by cl. 88 of the 1929 Table A, which is as follows:—

> "All acts done by any meeting of the directors or of a committee of directors, or by any person acting as a director, shall, notwithstanding that it be afterwards discovered that there was some defect in the appointment of any such director or person acting as aforesaid, or that they or any of them were disqualified, be as valid as if every such person had been duly appointed and was qualified to be a director."

It is clear, I think, that these provisions will apply to most cases, and certainly to all cases where the acts were done *bonâ fide* by unqualified directors the disqualification of whom has not been realised. Moreover, an article in the form of cl. 88 of Table A will in a proper case operate to validate acts not only as between the company and outsiders who have dealings with the company, but also as between the company and its members. This was decided in the case of *Dawson* v. *African Consolidated Land and Trading Company* [1898] 1 Ch. 6, where the three directors of the company had passed a resolution for a call on the shares, and payment was resisted by some of the shareholders on the ground that (*inter alia*) one of the directors had parted with his qualification shares, and thereby under the articles of the Company ceased to be a director, and had not been re-appointed a director, although before the resolution for the call was passed he had acquired further shares sufficient for a qualification. There was no evidence that the defect was known to anybody, and the Court of Appeal held that the relevant article (which was almost identical with cl. 88 of the 1929 Table A) validated the resolution of the directors, and the call was valid. It will be seen also from the cases of *British Asbestos Company Ltd.* v. *Boyd* [1903] 2 Ch. 439, and *Channel Collieries Trust Ltd.* v. *Dover, St. Margaret's and Martin Mill Light Railway Company* [1914] 2 Ch. 506, to which I refer below, that such a provision may operate in favour of the very directors in whose case the defect existed.

The provisions of s. 143 of the 1929 Act and of an article in the form of cl. 88 of Table A will not give validity to acts done by directors who are not only disqualified, but are known to be disqualified. But what for this purpose amounts to knowledge of the defect or disqualification? Do these saving provisions continue to operate where there is knowledge of the facts constituting the defect, although the fact of the defect is not realised? This point was considered by Farwell, J., in *British Asbestos Company Ltd.* v. *Boyd, supra.* There a director, B, was appointed secretary of the company, and under the articles he thereby vacated office as director. He resigned his office as secretary and continued to act as director, and at a meeting of directors, B and the only other director of the company passed a resolution electing X a director, under a power in the articles to fill casual vacancies. The three continued to act as directors and throughout acted in good faith, the fact that B had vacated his office on becoming secretary and the consequent irregularities not being brought to their attention for several months Farwell, J., held that the irregularities in the appointment of B and X and the subsequent acts of the three directors were validated by s. 67 of the Companies Act, 1862 (now s. 143 of the 1929 Act) and by art. 108 of the company (which was in the same form as cl. 88 of the 1929 Table A). It was argued that as the facts constituting the defects in the appointment of B and X were known to the directors, they could not rely on the provisions of the article and the Act, even though the legal result of those facts was not present to their minds. Farwell, J., held however that this was not so: "In my opinion, the words 'notwithstanding that it shall afterwards be discovered that there is some defect' . . . do not mean . . . that the facts are afterwards discovered, but that the defect is afterwards discovered . . . It is not that the facts are not known, but that the knowledge of the defect is not present to the mind of any person to whom it is material at the time to know it . . . The section and the article are of general operation. I think it is decidedly beneficial that it should be so, and that, although there may be some slip which has been overlooked, if it has been *bonâ fide* overlooked, then the acts of the *de facto* directors are as good as the acts of the *de jure* directors."

This view was upheld by the Court of Appeal in *Channel Collieries Trust Ltd.* v. *Dover, St. Margaret's and Martin Mill Light Railway Company, supra.* There J, the sole continuing director of the company (which was governed by the Companies Clauses Act, 1845) had power to appoint two directors. It was a condition precedent to the election of a director that he should hold the required qualification shares. J appointed X and Y directors, neither of whom held the necessary qualification shares at the date of their appointment. They were, therefore, not duly appointed and could not act as directors. J, X and Y, acting in the *bonâ fide* belief that the appointment of X and Y, subject to their at once acquiring their qualification shares, was good, purported to allot such shares to X and Y. It was held by the Court of Appeal that this irregular allotment was validated by s. 99 of the Companies Clauses Act, 1845 (which corresponds to s. 143 of the Companies Act, 1929). Cozens-Hardy, M.R., said this: "It has been argued for the appellants . . . that this is a clause which ought not to be relied upon by persons who were aware of the facts, although not aware of the legal conclusions resulting from those facts, because such persons must be taken to know the law, and it would be wrong that they should take the benefit of s. 99. It seems to me that the question may be put very shortly: Aye or no, were the parties in this transaction acting in good faith? If they were, s. 99 ought to be available for all parties, including the directors themselves. If there is a lack of good faith, then of course the court will not allow those who are lacking in good faith to take the benefit of it . . . If there is good faith, and I emphasise that, the mere fact that the person claiming the benefit of the section had notice of the existence of the facts which led to the disability is not sufficient to disentitle him to rely upon it if he can honestly say, 'I was not aware of the defect and the consequences of the facts I know, I was not aware of the disqualification which now exists."

The learned judge said that in his view the decision to the contrary of Kekewich, J., in *In re Staffordshire Gas & Coke Company Ltd.*, 60 L.T. 413, was wrong; in that case it was held that the promoter and managing director of the company, knowing as he did of everything relating to the company, must be taken to have had notice of the defect in the qualification of the directors, and therefore could not rely on a contract entered into with him by *de facto* directors who had not acquired their qualification shares.

It appears, therefore, that acts of directors who are not qualified will be valid in favour of any persons, including themselves, who act *bonâ fide* and do not know of the fact of the disqualification even though they are aware of the facts the legal result of which is disqualification. In a recent case, *Craven-Ellis* v. *Canons Ltd.* [1936] 2 K.B. 403, the question of the validity of an agreement appointing a managing director arose. Neither the managing director nor any of the other directors had acquired the necessary qualification, and the seal of the company was affixed to the agreement by resolution of the unqualified directors. The Court of Appeal held that the agreement was void. Greer, L.J., said: "The contract, having been made by directors who had no authority to make it with one of themselves, who had notice of their want of authority, was not binding on either party." This is in accordance with the decisions I have mentioned: the managing director could not take advantage of the provisions of s. 143 of the Companies Act, 1929, or of cl. 88 of Table A, if he knew of the actual want of authority. It does not appear, however, from the report whether or not, though the facts which constituted the disqualification were known to all parties, the legal effect of those facts was appreciated, though Greene, L.J., said that at the time of the contract both parties believed that the plaintiff was a director and was capable of continuing to act as a director. Greer, L.J., said that it was clear that "the directors having no qualification ceased to be directors, and were unable to bind the company except as *de facto* directors by agreements with outsiders or with shareholders. But all the directors must be taken to have known the facts." It is suggested with respect that if the ground of Greer, L.J.'s decision that the contract was void was that the plaintiff knowing all the facts must be taken to have known that the directors were disqualified and could not enter into the contract on the company's behalf, this is not entirely in accordance with the decisions in *British Asbestos Company Ltd.* v. *Boyd* and the *Channel Collieries Case*, *supra*; for according to those decisions the plaintiff in *Craven-Ellis* v. *Canons Ltd.*, if acting *bonâ fide*, could still have relied on s. 143 of the 1929 Act. The earlier cases do not appear to have been cited to the Court of Appeal, nor does it seem that much reliance was placed on s. 143; and in any event the decision of the court was in the plaintiff's favour, as he was held entitled to recover for his services as managing director on a *quantum meruit*. Further, Greene, L.J., held that the contract was void on other grounds, viz., that under the articles of the company the only power given to directors to appoint a managing director was a power to appoint one of their own number, i.e., a person who was a director. The plaintiff having failed to acquire his qualification shares, was not a director, so that his appointment as managing director would have been *ultra vires* a properly constituted board; and, if so, s. 143 of the 1929 Act would not help the plaintiff as its provisions do not empower a *de facto* board to do what a *de jure* board is incapable of doing.

Special afternoon courts will be held in the New Year at Wealdstone to deal with all matrimonial cases in the Gore Petty Sessional Division. Major E. R. Raymond Bond, the Clerk, has stated that there would be no difference in procedure, but they were hoping, without denying the parties any justice, to bring about reconciliations.

A Conveyancer's Diary.

[Contributed.]

Estate Duty on Nomination Policies.

In this article I propose to discuss the incidence of estate duty on those policies of life insurance known as nomination policies. For this purpose I will assume a state of facts which reduces the problem to its lowest terms. In 1910 A, the deceased, took out a policy whereby he bound himself to pay £100 per annum to the insurance company in each year until 1920 or his earlier death. The company contracted to pay the sum of £1,200 to B on A's death, at whatever date. The premiums were duly paid, and A ultimately died in 1936, having survived the payment of the last premium by some sixteen years. What estate duty is payable on the £1,200, if any?

It is important that we should first get clear the exact legal nature of this transaction. The policy is a contract, whereby in consideration of the company's promise to pay £1,200 to B at a future date A bound himself to pay the company certain annual sums. In other words, A purchased for B a reversionary chose in action.

It is necessary to be perfectly clear upon this point, as there are two other similar legal positions which might be urged as being the true ones. The first suggestion would be that the transaction created a trust in favour of B, and that consequently the £1,200 would be exempt from estate duty under s. 2 (3) of the Finance Act, 1894. I do not think that this statement correctly interprets what occurred, and even if it does, the policy moneys are not within the sub-section referred to, for the sub-section provides that "Property passing on the death of the deceased shall not be deemed to include property held by the deceased as trustee for another person . . . under a disposition made by the deceased more than twelve months" (now, of course, three years) "before his death where possession and enjoyment of the property was *bonâ fide* assumed by the beneficiary immediately upon the creation of the trust and thenceforward retained to the entire exclusion of the deceased or of any benefit to him by contract or otherwise." Here many of the elements seem to be present for bringing the sub-section into play. The policy had been taken out far more than three years before the death, and throughout the duration of the policy B had been the only person beneficially entitled to the prospective £1,200. Moreover, in a loose sense of the word, it might be said that there was a trust of this future sum in favour of B, but that is so only in a very loose sense. Here there is really nothing until the right to sue for the £1,200 falls into possession, and if this be a trust, then every person entitled to a future chose in action must be said to be entitled under a trust. Such a proposition is surely incorrect; the right to sue is a right at law, though a future right; the right of a true *cestui que trust* is a right in equity. In any case the sub-section refers to "property held by the deceased"; here there is no asset to which those words could apply. No one but B has ever had a right; so far from having a right, A had a liability to pay the premiums.

Secondly, it might be suggested that since the last premium was paid fifteen years or so ago, the policy is really a fully paid-up life policy which had been given to B. If so, it might be argued that the policy moneys are exempt from duty on the strength of the following passage in "Dymond," 6th ed., 1931, p. 88: "No estate duty is claimed by the Revenue in cases where the deceased has made an absolute gift of a fully-paid policy on his life more than three years before his death." Now there are three points to be noticed in this connection. In the first place, "Dymond" does not say that the policy moneys are not strictly liable to duty in the case he cites, he only says that the Revenue does not claim such duty. In other words, the Revenue makes a concession. There does not appear to be any ground for it in law.

Secondly, this passage seems to have been eliminated from the current (7th) edition of "Dymond," and I understand that the concession is no longer made. Thirdly, as applied to the case we are considering, the passage seems not to be in point: for this is not a case where A takes out an ordinary life policy, and when it is fully paid up assigns it to B. Here the policy is in favour of B *ab initio*; he takes *ex contractu* under the policy itself in his own right; he does not take by virtue of a gift to him of a right of action formerly vested in A. In any event, even if there is in a sense a gift by A to B, it can hardly be said that the policy was fully paid up at the date of the gift; for if anything was given at all it was given when the policy was first taken out, when it was by no means fully paid up.

It appears to me that this policy is chargeable under s. 2 (1) (*c*) of the Finance Act, 1894, which incorporates among its other tangled provisions the following words from the Customs and Inland Revenue Act, 1889, s. 11: "The charge under the said section" (i.e., s. 38 of the Customs and Inland Revenue Act, 1881, which is also incorporated in s. 2 (1) (*c*) of the Act of 1894) "shall extend to money received under a policy of insurance effected by any person . . . on his life, where the policy is wholly kept up by him for the benefit of a donee, whether nominee or assignee . . ." I do not think that such cases as *Lord Advocate* v. *Robertson* [1897] A.C. 145, affect this conclusion.

Assuming, however, that this view is wrong, the present case still seems to be covered by s. 2 (1) (*d*) of the Act of 1894, which charges "Any annuity or other interest purchased or provided by the deceased . . . to the extent of the beneficial interest accruing or arising by survivorship or otherwise on the death of the deceased." These very wide words seem to be directly in point. The deceased purchased for B a reversionary chose in action which fell into possession on his death. Until his death it was a mere future right. By his death it became a presently enforceable right.

The policy moneys, therefore, seem to be chargeable with estate duty. They are not, however, aggregable with the residue of the estate of the deceased for purposes of duty, for on no reasonable interpretation can it be said that the deceased ever had any sort or kind of interest in them himself. Consequently, they are to be treated as "an estate by itself" under the unrepealed portion of s. 4 of the Finance Act, 1894.

I have so far discussed this problem on the basis of the most straightforward case of a nomination policy; but it must be remembered that there are a good many other similar cases, of varying degrees of complexity, to which much the same reasoning would apply. Such, for example, would be a policy under the Married Women's Property Acts. In such a case, moreover, it seems to me to be highly doubtful whether the money would by any means always be exempt from aggregation; for policies of this sort often provide a contingent interest for the deceased in case of the previous decease of the wife and failure of issue. It does not appear to matter that someone else does in fact actually survive and take the benefit. The existence of this contingent interest would seem to exclude the application of the words "property in which the deceased never had an interest." I understand also that there are numerous policies taken out under pension schemes which result in the payment of a lump sum on the death of the person insured at a date before he becomes entitled to his pension-annuity. In some of these cases the precise destination of the policy moneys is only determined after the actual death of the deceased by some outside person or body. For instance, in the case of colleges at Oxford or Cambridge, the ultimate disposal of the proceeds as among the widow and issue may be in the hands of the body corporate, the college, of which the person insured was a member. Such a case would seem to be on the same footing as a simple nomination policy and to be chargeable under s. 2 (1) (*c*) or 2 (1) (*d*) of the 1894 Act or under both. In a case where the insured has only paid a proportion of each premium and his employer has paid the rest, there may be a question of apportionment, as a result of which only a part of the policy moneys will be chargeable. All these problems, of course, depend on the facts of each particular case, but in considering them the advisers of the parties concerned may find some assistance in the elementary considerations relating to a nomination policy which I have set forth.

Landlord and Tenant Notebook.

Implied Request to Pay Impositions.

It is a general principle of law that when one man has in self-protection made a payment due from another, he may recover the amount so paid from the other as money paid for the other's use. Examples afforded by the law of landlord and tenant mostly concern cases of paying off distress; many, owing to subsequent modifications of the law made by the Lodgers' Goods Protection Act, 1871, and the Law of Distress Amendment Act, 1908, no longer usefully serve save as illustrations. But other examples have been provided by cases in which one party has paid some outgoing in the nature of a rate or tax due from the other, and these, in view of the fact that there are in many parts of the country charges imposed by virtue of local Acts, are worthy of consideration.

Thus, *Dawson* v. *Linton* (1822), 5 B. & Ald. 521, dealt with a local drainage tax, which the particular statute made payable by tenants but which they were authorised by the same enactment to deduct from rent. The plaintiff in this case had been tenant of the defendant; he had quitted at the end of the term, having duly paid all rent, but had left some wheat on the premises. The statute provided for distress, and the authorities adopted this remedy and seized the wheat, whereupon the plaintiff paid the tax. The plaintiff had never received any demand for payment. It was held that as the tax was ultimately payable by the landlord, the plaintiff could recover the amount as paid for him. A somewhat artificial line of reasoning, perhaps, but the result seems fairer than that obtained by the provisions of the Income Tax Act, 1918, s. 211 (2), described by MacKinnon, J., in *British Photomaton Trading Co.* v. *Henry Playfair Ltd.* [1933] 2 K.B. 508, as one tending "to outrage both common sense and what is fair."

Where there is a covenant, it is nowadays usually so comprehensive in its wording as to leave no doubt as to its applicability to any species or sub-species of imposition; and the advisability of relying on such a provision in preference to a claim based on implied request was demonstrated long ago by *Spencer* v. *Parry* (1835), 3 Ad. & Ell. 331. The landlord was plaintiff in that case, and he sued in debt for the amount of rates payable under a local Act of Parliament for "regulating the affairs" of two London parishes. The parochial authorities were entitled under this statute to distrain on anyone receiving the rents of the properties affected, the landlord being primarily liable. When they set about collecting the rate, the tenant, defendant in the case, had left, and they obtained payment from the landlord's agent. The defendant's tenancy agreement had contained a covenant by him to pay the rent free and clear of all land tax and parochial taxes, and if the plaintiff had sued on this covenant he would have succeeded. As it was, he sued for money paid to the defendant's use, but as he had paid to someone who had no claim upon the defendant he was non-suited.

The question whether it is the duty of a ratepayer to seek out the ratepayees, like an ordinary creditor, was disposed of long ago; under the original statute, the famous 43 Eliz. c. 6, it was held that this was indeed the position, this view being supported by the fact that a demand was necessary before distress could be levied: it followed that no demand was

necessary to make the debt due. This interpretation was adverted to in *Davis* v. *Burrell* (1851), 10 C.B. 821, an action for assault and false imprisonment arising out of the plaintiff's reactions to a forfeiture enforced by the defendant, his ex-landlord. The plaintiff had covenanted to pay rates; there was a proviso for re-entry on breach of any covenant; relief could not be granted for such a forfeiture in those days; and when the plaintiff got into arrear with his rates (two instalments due) the defendant re-took possession without troubling to go to law. The plaintiff thereupon attempted to do what might be called "stage a come-back," but also without going to law; to which, however, he was brought by the defendant, who had him arrested for wilful damage, under the Metropolitan Police Act, 1839, s. 54. In this action, he pleaded that, as the local authority had never applied to him, he was not in default with the rates; which contention failed.

This position has since been further gone into in *Sowerby* v. *Lindsay* (1928), 44 T.L.R. 714, C.A., a decision which turned on the subtle distinction between "paid" and "payable." The agreement between the parties to a lease was that the tenant should punctually pay the rates, and that the landlord should refund sums paid in any one year of the term which ran from Midsummer, in excess of a named figure. The crafty tenant, by paying the rates for three rating half-years within one year of his tenancy (rating half-years would not correspond to quarters under the lease), qualified for a refund of the difference between the total of the three payments and the figure named. For rates are payable when the rate is made; but whether they are "punctually" paid, if paid within the period to which they relate, was not definitely decided, the view being that at all events the covenants were not interdependent.

Modern covenants, as mentioned, usually provide for every kind of imposition; they also take into account the fact that these may be imposed, as it were, either *in personam* or *in rem*. The reasoning which distinguished between impositions payable "in respect of" and "on" premises—see *Hartley* v. *Hudson* (1879), 4 C.P.D. 367, and the cases it reviews—verges on hair-splitting, and was dealt with by more comprehensive language being introduced into covenants; but even since the change there has been one lease before the courts which left room for argument. In *Eastwood* v. *McNab* [1914] 2 K.B. 361, it appeared that a lease to the defendant, granted in 1905, contained a tenant's covenant to pay all rates, taxes, duties of an annual nature imposed or charged on the premises or the owner or occupier in respect thereof. The authorities assessed the plaintiff, though she was no longer the occupier. This, and the fact that the plaintiff instructed her bankers to pay inhabited house duty on assessment, without waiting for a demand note, and without appealing, led to the trouble. It was held, however, that this duty was "on" houses, and was "payable" without demand being made, so that the defendant was liable on the covenant, which implied a promise to refund the amount.

Some measure of compulsion is essential to an action on an implied promise to refund, and it was held in *Harris* v. *Hickman* [1904] 1 K.B. 13, that the preliminary "written intimation" which "brings to the notice" of "any person who may be required to abate" a nuisance, under the Public Health (London) Act, 1891, s. 3, the disregarding of which involves no penalty (as opposed to a notice under s. 4), does not satisfy this requirement.

Mr. Henry Geoffrey Elwes, solicitor, of Colchester, left estate of the gross value of £28,343, with net personalty £7,810. He left £1,000 to the Boy Scouts Association; £500 to the Essex County Hospital; and £100 each to the Solicitors' Benevolent Society and the National Benevolent Institution.

Our County Court Letter.

CONTRACTS FOR ADVERTISEMENTS.

In the recent case of *Scott and Scott* v. *Harden*, at Stow-on-the-Wold County Court, the claim was for £2 12s. as the price of advertisements in "The Radio Magazine Cover." The latter had a guaranteed minimum weekly circulation of 1,000 in the North Cotswold area, e.g., 150 in Stow-on-the-Wold, 250 in Moreton-in-the-Marsh, 100 at Naunton, 120 at Bourton-on-the-Water and ninety at Blockley. The defendant's case was that he signed the order on the representation that the price would be 1s. a week, but there would be no obligation to advertise, as the only effect would be to reserve for him the trade monopoly for the North Cotswold area from Blockley to Winchcombe. A copy of the agreement was afterwards sent to him, but the words "cannot be" had not been deleted from the sentence, "Trade monopoly cannot be granted," although they were struck out of the form he signed. The advertisement was also restricted to Stow-on-the-Wold, which would be useless, and the defendant therefore disputed liability, on the ground of fraud. The advertisement had nevertheless been published, but the defendant refused to pay, and was first sued in the Willesden County Court, where the case was struck out. His Honour Judge Kennedy, K.C., was not satisfied that the circulation figures were correct. The plaintiffs conducted most of their business from Bristol, but one partner was a hairdresser at Exeter, and there was also an office in London, apparently for suing people there. The contract was to give the defendant the trade monopoly for the area, but this had not been done, as two other greengrocers' shops were advertised, viz., at Bourton-on-the-Water and Blockley. Judgment was given for the defendant with costs. Compare a note under the above title in the "County Court Letter" in our issue of the 5th December, 1936 (80 Sol. J. 969).

THE TITLE TO OSIER BEDS.

In *Hill Brothers* v. *Gillingham*, recently heard at Worcester County Court, the claim was for £2 as damages for trespass. The plaintiffs' case was that Lyth Farm had been conveyed to them in 1921, but a dingle (the site of an osier bed) was admittedly not included in the parcels or the plan. The previous owner, however, had always had the osier crop, and, on the bed being turned into a fishing pool, the plaintiffs had received the rent for two or three years. They had also been paid for the shooting rights, and they received 1s. a year as rent for an electric cable over the land. They had also given a third party permission to plant watercress, and had otherwise behaved consistently with the land being their own. Nevertheless, the defendant had cut the osiers in September, 1936. The defendant's case was that the land in dispute had been glebe farm property for 100 years, and that the real owner was either himself (as rector of Ombersley) or Lord Sandys. The latter had owned the farm down to 1918, but he had never claimed the dingle, which was regarded as glebe land. His Honour Judge Roope Reeve, K.C., held that the claim for trespass failed. The question of the ownership of the land did not arise, as the plaintiffs could not show any title to it on their deeds, and were unable to rely upon twelve years' adverse possession. Judgment was given for the defendant, with costs.

THE TITLE TO RACEHORSES.

In reference to the case of *Wild* v. *Mitchell*, noted under the above title in the "County Court Letter" in our issue of the 12th December, 1936 (80 Sol. J. 987), fresh proceedings were subsequently taken in the High Court. Mr. Justice Humphreys (at Birmingham Assizes) held that the horse did not belong to the defendant, the only doubt being whether it belonged to the plaintiff or her fiancé. This question had not arisen, however, and judgment was given for the plaintiff, with costs.

POINTS IN PRACTICE.

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Equity of Redemption — Partial Intestacy pre-1926 — Position.

Q. 3392. I am confronted with rather a strange point of law, and I shall be obliged if you would give me your opinion. The facts are set out below. A died in May, 1924, possessed of the equity of redemption in Whiteacre, the legal estate having been conveyed by way of mortgage some years previously. By his will he attempted to dispose of his property by the following bequest, "I give and bequeath my daughter B the whole of personal property and belongings." C, the executor of the will, proved it in January, 1925. D, the heir-at-law of A, being satisfied that A had intended B to have Whiteacre, and it being doubtful that the wording of the bequest in the will passed real property, in May, 1925, conveyed his estate and interest (if any) in Whiteacre to B, subject to the mortgage. The conveyance was under seal and was stamped. No conveyance has ever been made from C, who is now dead, to B. C left a will which has never been proved owing to his estate being of no value. B has been in uninterrupted possession of the property since the death and has paid the mortgage interest to date. The property is now offered as a security by B for a loan which exceeds the amount now owing on the existing mortgage by £20. The questions arising are these :—

(*a*) Ought there to have been a conveyance under seal of the property from C to B ?

(*b*) If so, since it would be an unwarrantable expense to prove C's will, can the omission be remedied in any way ? In this connection it occurred to me that if a transfer of the existing mortgage were taken, I should be accepting the doubtful title only in respect of the excess of the new advance over the existing mortgage. This might be a good compromise.

It appears to me that if the equity of redemption passed to B under the wording of the bequest in the will, then there must have been an implied assent from C in favour of B, and the conveyance by D, the heir at law, would be superfluous. But I know of no case decided on the words in question. If this is so it seems that there must be a certain amount of doubt as to the meaning of the words. If there was an intestacy in respect of the equity of redemption, it appears that it would pass to D until the appointment of a personal representative. The executor, C, proved the will and therefore the property vested in him and he ought to have conveyed it to B. I do not think it can be argued that there was a bare outstanding legal estate in the executor on 1st January, 1926. But I realise that the transitional provisions relating to mortgages affect the position and I am not sure whether or not the Law of Property Act, 1925, 1st Sched., Pt. 7 (3) helps me at all.

A. (*a*) We certainly think that there should have been a conveyance.

(*b*) This is quite a sound suggestion.

We agree with our subscriber's view of the position if the will (which is probable) carried the equity of redemption. If there was a partial intestacy, then we are unable to agree that the equity ever vested in the heir. There was an executor who took title from the will and not from the probate, a mere official recognition of the will. We suggest that C took the equity in his representative capacity at the moment of death. Further, as there was an intestacy, there could be no question of assent implied or otherwise pre-1926. Thus B was not actually entitled to call for the legal estate on 1st January, 1926. It follows that L.P.A., 1925, renders no assistance either through Sched. I, Pt. II, para. 3 or Pt. VII, para. 3.

Town Planning and Licensed Premises.

Q. 3393. A is the owner of fully licensed premises, and in the draft scheme of a regional town planning committee the whole of the surrounding area, including the area of these premises, has been scheduled as residential and private dwelling-houses only. Should A object to this character-zoning, and what would be the effect if it is left to go unchallenged ? For example, when the town planning scheme comes into operation :—

(*a*) Would A be compelled to give up his business as licensee ?

(*b*) Supposing A committed an offence and his licence was forfeited by the licensing justices, would that preclude the premises from again being used for business purposes by his successor ?

(*c*) Could A sell his business as a going concern ?

The scheduling of the area as residential instead of industrial is likely to deprive A of considerable trade. Has he a right to claim compensation on account of the scheduling in this manner ?

A. A should lodge an objection, as the effect of not challenging the scheme would be that no enquiry would be ordered by the Minister of Health, and no proposals for modification could be considered. On the points raised :—

(*a*) A would be compelled to give up his business, but would be entitled to compensation under the Town and Country Planning Act, 1932, s. 18.

(*b*) Yes, as it is improbable that a fresh licence would be granted.

(*c*) There is no legal objection, but, on commercial grounds, A is unlikely to find a buyer.

Compensation is payable under s. 18, *supra*.

Warehouseman's Charges.

Q. 3394. In 1926 A deposited with B, who is a furniture dealer and warehouseman, some packages, verbally agreeing to pay seven shillings and sixpence per month and for fire insurance. A paid £5 for cost of removal and six months' warehousing and insurance in advance.

The charges now amount to about £40.

Since the date of the deposit B has been unable to trace A, who has left the district, and B is anxious to recover the warehouse charges and expenses, etc., by selling the goods. There is no written agreement of any kind.

1. Can B open the packages to ascertain the contents ?

2. Can B sell the goods after, and if so, what, notices ?

3. If a sale is permissible, how should the surplus, if any, be dealt with ?

4. Generally, what are B's remedies ?

A. As a bailee for reward, B is not entitled to open the packages or sell the goods. The first and second questions are therefore answered in the negative, and the third does not arise. The fourth question is answered as follows :

B should sue in the county court for the present amount due, viz., about £40. Having obtained an order for substituted service, he will in due course obtain judgment by default, upon

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COUNTY COURT CALENDAR FOR JANUARY, 1937.

Circuit 1—Northumberland, etc.
His Hon. Judge Thesiger
Alnwick, 12
Berwick-on-Tweed,
Blyth, 25
Consett, 15
Gateshead, 5
Hexham, 18
Jarrow,
Morpeth,
†*Newcastle-upon-Tyne, 6 (R.B.), 8 (J.S.), 19, 20 (B.), 21, 27 (R.B.)
North Shields, 14, 26 (B.)
South Shields, 6, 11

Circuit 2—Durham, etc.
His Hon. Judge Richardson
Barnard Castle,
Bishop Auckland, 27
*Durham, 11, 12 (*R.B. every Tuesday*)
Guisborough,
†*Middlesbrough, 15, 20 (J.S.), 29
Seaham Harbour, 18
†*Stockton-on-Tees, 19 (B.), 26
Stokesley (*as business requires*)
†*Sunderland,
†West Hartlepool,

Circuit 3—Cumberland, etc.
His Hon. Judge Allsebrook
Alston,
Appleby,
†*Barrow-in-Furness,
Brampton,
*Carlisle,
Cockermouth,
Haltwhistle,
*Kendal,
Keswick,
Kirkby Lonsdale,
Millom,
Penrith,
Ulverston,
†*Whitehaven,
Wigton,
Windermere,
*Workington,
(*List not yet received*)

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Shipston-on-Stour,
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HIS HON. JUDGE DRUCQUER
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HIS HON. JUDGE KONSTAM, C.B.E., K.C. (Add.)
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Whitechapel, 8, 13, 15, 20, 22, 27, 29

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HIS HON. JUDGE THOMPSON, K.C.
HIS HON. JUDGE HIGGINS (Add.)
HIS HON. JUDGE KONSTAM, C.B.E., K.C. (Add.)
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HIS HON. JUDGE EARENGEY, K.C.
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HIS HON. JUDGE HIGGINS (Add.)
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Circuit 44—Middlesex
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Circuit 46—Middlesex
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†*Exeter, 14, 15, 28
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Kingsbridge,
Launceston, 19
Liskeard, 15
Newquay,
Penzance, 6
†*Plymouth, 12, 13, 14
Redruth, 7
St. Austell, 4
Tavistock, 18
†*Truro, 8

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which he will be entitled to issue execution. B should direct the bailiff to levy on the packages, which may be opened by the bailiff. See the Annual County Courts Practice, 1936, p. 193, line 32. If the goods taken at first do not realise enough to satisfy the judgment, further levies may be made under the same warrant. If some of the contents remain, after satisfaction of the judgment, B can debit A's account with further storage fees. When the arrears are approximately equal to the value of the remaining goods, a fresh summons can be issued, and judgment obtained for the further amount due. The remaining goods can then be sold under an execution as before.

Scope of Decision in *Re Bridgett and Hayes' Contract.*

Q. 3395. A, having made his will prior to 1926, devised his real estate to his two trustees upon trust to permit his wife to receive the rents and profits thereof during her life and after her death upon trust to sell same and divide the proceeds thereof amongst the persons therein mentioned. A died in 1933 leaving his widow him surviving. No vesting assent or deed was given or executed in favour of the widow, who died in 1935, she having received the rents and profits of the realty until her death. The personal representative of A's widow has contracted to sell A's real property under the authority of the decision in *Bridgett and Hayes' Contract,* and after sale proposes to hand over the net proceeds to the trustees of A's will for division in accordance with the trusts of the will. The purchaser's solicitors contend that the decision in *Bridgett and Hayes' Contract* applies only in the case of a testator or settlor who died prior to 1926 and the tenant for life dying after 31st December, 1925, and that as no vesting assent or deed was given or executed in favour of the widow in the case in point the only persons who can make a good title to the realty are the trustees of A's will, and that the personal representative of the widow is in no way concerned with the realty of A. Will you kindly :—

1. Give your full opinion on the respective contentions of the vendor's and purchaser's solicitors.

2. State the effect of 1st Schedule, Part II (6) (*c*), Law of Property Act, 1925, on the point.

3. Say whether the property vested in the widow notwithstanding that no vesting assent or deed was made or executed in her favour, bearing in mind the last quoted 1st Schedule, etc.

4. If answer to 3 is in the affirmative why should a vesting assent or deed be given or executed at all, except, perhaps, for the purpose of a sale by the tenant for life ?

5. What difference would it make in the point raised if the widow had died after 1925 and the testator before that year ?

6. Generally on the point—quoting all authorities.

A. 1. It is only when the legal estate is in the tenant for life (or the person having the powers of one) and the settlement terminates with the death of such life tenant (or person) that the decision in *Re Bridgett and Hayes' Contract* (71 Sol. J. 919) is in point. Such legal estate may become so vested either by way of the transitional provision of L.P.A., 1925, and allied Acts or by way of a vesting instrument. The transitional provisions only affect a position existing at the close of 1925. Application of the above principles makes it clear that title must be made either by the personal representatives of A as such, or by the trustees of his will after assent by such personal representatives to the devise upon trust for sale. For form of assent see L.P.A., 1925, Sched. V, Form 9. It is to be noted that the sale will be effected by way of the trust for sale of the assent as distinct from that of the actual will. The personal representatives of the late tenant for life are not in a position to make title seeing that the tenant for life did not have the legal estate.

2. This is a transitional provision and not applicable in any way to a will coming into effect in 1933.

3. The widow certainly never had the legal estate.

4. *Cadit quæstio.*

5. If the testator had died before 1926 (and also if he had died before 1925 for that matter) and the equitable tenant for life had died after 1925, the tenant for life would have taken the legal estate under the relevant transitional provision (L.P.A., 1925, Sched. I, pt. II, paras. 3 and 6 (c)) if assent to the devises of the will had been made (by conduct or otherwise) before 1926.

6. It is not thought that anything can usefully be added to the above remarks.

Duration of Tenancy Agreement.

Q. 3396. We have before us a tenancy agreement containing the following term : " The landlord shall let and the tenant shall take All that suite of rooms, etc., For the term of one year from the 23rd day of February, 1935, and thereafter from year to year until the tenancy shall be determined by either party giving to the other at least one month's notice in writing to quit At the yearly rent of £65 clear of all deductions to be paid every four weeks in advance." Our view of this term is that it necessitates the tenant giving to the landlord one month's notice in writing to quit expiring on the 22nd day of February in any year of the term. We shall be glad to have your opinion whether there is any case which will help us to construe the agreement to the effect that one month's notice can be given at any time during the year.

A. The questioners' interpretation is correct. Unless the requisite notice is given, the tenancy enures for a further year on each 23rd day of February. There is no case enabling the tenancy to be terminated at any time during a year, once a fresh year of the tenancy has started. The earliest possible date of termination is the 23rd February, 1937.

Co-owners—Mode of Assurance by the One to the Other of his Interest.

3397. Q. In 1924 freehold property is conveyed to A and B, who are husband and wife, as joint tenants. In 1936, B, the wife, desires to transfer her share and interest in the property to A. In the conveyance she expresses to convey and release as beneficial owner. Will this pass the legal estate, or only her equitable interest in the property ? In other words, ought she to convey, not only as beneficial owner, but as one of the trustees for sale ?

A. We think that the conveyance and release was effective to pass all the interest at law and in equity of B to A : see L.P.A., 1925, s. 63. The words " beneficial owner " are but words of art introduced to import covenants for title, and would not restrict the assurance to such interest as belonged beneficially to B. This form of conveyance by the one co-owner to the other is commonly met with, but is inartistic in that a trustee for sale has no right to pass away his interest in the legal estate in such a manner. Further, the trust for sale of A is not put an end to, and a purchaser from him might well raise the point that title must be made by way of the trust for sale (L.P.A., 1925, s. 42 (1) (*a*)), which would involve the appointment of an additional trustee. As against that view it might be urged that the trust has, in fact, been terminated by the concerted action of A and B (L.P.A., 1925, s. 23), and that even if not so terminated A could at any time convey to himself free from the trust (a futile formality). The writer's personal opinion is that in such a case the proper mode of assurance is for B to assure her equitable interest to A, after which, and in the same deed, A and B as trustees for sale should, at the request of A as then being solely entitled in equity, convey the legal estate to A free from the trust for sale. The objection to this is that a stamp *ad valorem* upon the consideration is required, plus 10s. for the passage of the legal estate, which is not an inseparable incident of the sale of an equitable interest. In our opinion our subscribers may pass the conveyance of 1936 with confidence.

To-day and Yesterday.

LEGAL CALENDAR.

21 DECEMBER.—On the 21st December, 1685, Sir George Lockhart succeeded Sir David Falconer as Lord President of the Court of Session.

22 DECEMBER.—On the 22nd December, 1865, Ernest Southey, a baker of thirty-five, was tried for the murder of his wife and child, whom he had shot dead with five shots from a revolver. In court at the Maidstone Assizes, his behaviour was very strange, and he constantly interrupted the proceedings, at one point repudiating the aid of his counsel. His actions in fact gave rise to grave doubts respecting his sanity, but the jury found him guilty and Mr. Justice Mellor sentenced him to death. He was duly executed.

23 DECEMBER.—On the 23rd December, 1621, Heneage Finch, son of Sir Heneage Finch, Recorder of London, was born at Eastwell, in Kent. He took no part in the Civil Wars, but in 1660, he was returned to the Convention Parliament, and was active in all the steps adopted to bring back Charles II to the throne. Next year he was again returned to Parliament, and played a prominent part in politics, finally succeeding Shaftesbury in the custody of the Great Seal and being raised to the peerage. After holding it for two years as Lord Keeper, he became Chancellor in 1675. In 1681 he became Earl of Nottingham.

24 DECEMBER.—In Miles de Gloucester, Earl of Hereford, we see one of the rough soldier judges who first established the King's law throughout England. Under Henry I he was sheriff of Gloucestershire and Staffordshire, a Justice Itinerant, and a Justice of the Forest, and, together with Pain Fitzjohn, he ruled the whole Welsh Border "from the Severn to the sea." Later, under Stephen, he became one of the strongest partisans of Matilda. After an active and perilous life he was accidentally shot dead while hunting on Christmas Eve, 1143.

25 DECEMBER.—Christmas revels at the Inns of Court were not always wholly fortunate occasions, to judge from an order made in 1612, for which Francis Bacon seems to have been largely responsible. It is recorded in the Pension Book of Gray's Inn: "For that the disorders in the Christmas tyme may booth infecte the mynds and prejudice the estates and fortunes of the younger gent . . . It is therefore ordered that ther shalbe comons of the house kept in every house of Court duringe the Christmas & that none shall play in the severall halls at the dice except he be a gent: of the same societie & in comons & the benefitt of the boxes to goo to the Butlers of every house respectively."

26 DECEMBER.—On the 26th December, 1804, Joseph Napier, the youngest son of William Napier, a merchant of Belfast, was born there. He was called to the Irish Bar in 1831, took silk in 1844, and entered Parliament in 1848. He distinguished himself in the courts and took a prominent part in politics, and in 1858, Lord Derby appointed him Lord Chancellor of Ireland, but in the following year he lost his place on the fall of the Government. When next Lord Derby came in, however, he was passed over, being solaced with the place of a Lord Justice.

27 DECEMBER.—On the 27th December, 1850, George Sloane, a well-known special pleader of Pump Court, in the Temple, was brought to the Guildhall Police Court for the preliminary hearing of charges of revolting cruelty towards his servant girl. A large crowd greeted his arrival with hisses and roughly handled even his counsel. After the hearing, at which he was committed for trial, the police barely saved him from being torn to pieces, and the cab in which he was removed had its windows broken and was covered with a shower of mud and filfth. Later Sloane was convicted and imprisoned.

THE WEEK'S PERSONALITY.

Sir George Lockhart in his day was the most eloquent and skilful advocate at the Scottish Bar. A contemporary says: "He did so charm and with his tongue drew us all after him by the ears in a pleasant gaping amazement and constraint, that the wonderful effects of Orpheus' harp in moving the stones seems not impossible to an orator on the stupidest spirit." In 1674 he was the central figure of an extraordinary strike by a great body of the advocates occasioned by a difference of opinion with the judges regarding the right of appeal. The Government sided with the judges, and Lockhart, having been debarred from practice, fifty of his friends withdrew from practice too. At one time they were forbidden to come within twelve miles of Edinburgh, and legal business was virtually at a standstill. Eventually the dispute was patched up. He was a judge for little over three years, just surviving the Whig Revolution of 1688. Had he lived longer, it is doubtful whether he would have fared well under the new régime, for he is said to have opposed the address to the Prince of Orange. As it was, he met a tragic end, being shot dead by a dissatisfied litigant.

POETIC JUSTICE.

Poetry seems to have been coming into its own in continental jurisprudence of late. In Vienna, a poet who had made a false statement on oath concerning the ownership of some furniture, was acquitted of perjury on the ground of poetic licence, the court holding that poets are unable to distinguish between fancy and reality in their own lives. One cannot help recalling the grim contrast of Mr. Justice Avory's: "If Tom Hood had come before us, I should have sent him to prison," when a man accused of libel cited that poet's works by way of excuse. In Paris, quite recently, a defendant in an action for defamation pleaded his case in verse, reciting a long poem of his own composition, but that is not wholly without Gallic precedent, for, in 1822, an author named Manchrat, being brought to trial at the Lyons Assizes on a charge of uttering seditious cries, read a long poem ending:—

"Il a chanté Bacchus, les guerriers et l'Amour,
Et salon votre arrêt, chantera votre cour."

This may be freely rendered:—

"Wine and the wars and love, the subject of my lays,
And as the verdict goes, I'll sing the judges' praise."

His graceful plea was rewarded by acquittal.

DOMINIONS PAGEANTRY.

In a recent letter to *The Times* from a very active solicitor, it was suggested that the creation of Dominion Heralds of Arms for each of the self-governing Dominions would add symbolic dignity to official ceremonies overseas. The idea is a good one, and if Dominion feeling took to it, would be well worth adopting. Nevertheless, we must remember that English ideas of ceremonial are sometimes a little different. For example, in New Zealand, in about 1860, Mr. Justice Johnson, a judge fresh from the home country, went his first circuit. He was a stickler for etiquette and, having been warned, the High Sheriff in one district took pains to dress himself in top hat and frock coat and to provide a carriage with white horses, but all he got for his pains was a stern rebuke for having no javelin men to attend his lordship. Six months later the judge returned, having now learned enough about New Zealand not to expect javelin men, but he got them. The Sheriff, remembering the snub, had hired half-a-dozen players from a travelling theatrical company with tin helmets and breastplates and lathe and tinfoil halberds.

The directors of the Employers' Liability Assurance Corporation have appointed Mr. Samuel Harold Brown, of Messrs. Linklaters & Paines, to be a director on the general board in London. Mr. Brown was admitted a solicitor in 1898.

Reviews.

The Student's Law Dictionary. By G. R. Hughes, B.A. (Oxon.), of the Inner Temple, Barrister-at-Law. Sixth Edition, 1936. Demy 8vo. pp. vii and 344. London: Stevens & Sons, Ltd. 8s. net.

The utility of this concise work need by no means be confined to students, for, with brevity, it combines a very high degree of accuracy and a great deal of information. It does not set out to be a legal encyclopædia, nor a repository of archaic law terms, but the different definitions are illustrated by a very great many exceedingly useful up-to-date statute references. Now and then headings are telescoped which might have been kept separate; "Charter-party," for instance, is swallowed up in "Charterer." It is also a pity, perhaps, that the author kept his attention away from case law. But such criticisms are slight in the face of the many excellencies of a work which has deservedly reached its sixth edition.

Notable British Trials—The Trial of Robert Wood. Edited by Basil Hogarth. 1936. Demy 8vo. pp. vii and 268. London and Edinburgh: William Hodge & Co., Ltd. 10s. 6d. net.

Anyone who wants exercise for his deductive ability and his power of imaginative reconstruction will find ample scope in the facts of this case and as much material as the best fictitious murder mystery could provide. Even after the lapse of almost thirty years the personalities concerned in the trial of Robert Wood, a young artist, for the murder of a "lady of the town" found in bed with her throat cut, stand out fresh and vivid. The apparent absence of all motive in the crime, the popular feeling in favour of the accused, his actual inability to explain the cloud of suspicious circumstances which surrounded him, and, finally, his triumphant acquittal and subsequent lapse into obscurity form an intensely dramatic and very puzzling story. The editor in his preface provides a penetrating analysis of the evidence which forms a good corrective to the somewhat less critical account of the affair given by the late biographer of Sir Edward Marshall Hall, who steered the defence to a successful conclusion. This introduction indeed maintains a very high standard of skill and readability and places this volume in the forefront of a notable series.

The Law of Civil Aviation. By N. H. Moller, M.A., LL.M. (Cantab.), Barrister-at-Law. 1936. Demy 8vo. pp. xxxi and (with Index) 550. London: Sweet & Maxwell, Ltd. 25s. net.

This is the most substantial work as yet produced on this subject, and the learned author has dealt very fully with every aspect of it. Of necessity a very large proportion of the volume is taken up with statutes and regulations of various kinds, but there is an exhaustive index which will enable the reader to get speedily on the track of the particular point he is concerned to find out. An introduction dealing generally with the sovereignty of the air leads up to the history of the International Convention to regulate air traffic of 1919. Crown rights over air space are lucidly explained, and then we find ourselves immersed in the general law laid down as a result of the Convention and embodied in the Air Navigation Acts, 1920 and 1936. There are two parts to the volume before us: the first deals with international and statutory control, registration of navigation, and with aerodromes. The second with private rights in air space, liability for surface damage, third party insurance and carriage by air of passengers and goods. There are nine chapters in the volume, each one of which is in fact a complete exposition of itself—with introduction—of its particular theme. For example, if we take Chapter VII dealing with compulsory third party insurance we get what might well be a separate thirty-four page brochure on insurance law generally with special reference to its applicability to aircraft. Then there are ten appendices, each one covering a convention, a statute, a set of regulations, or some similar material subject. There is a very long table of cases, the bulk of which have reference not to decisions actually given by the courts in aircraft actions (which indeed, so far, are very few in number), but which, arising out of transport and other decisions, will doubtless have an important bearing upon the future of civil aviation.

Such briefly is an epitome of a volume which shows industry and thoroughness in dealing with the subject, and is likely to find wide appreciation.

Legal Problems in Medical Practice. By D. Harcourt Kitchin, of Gray's Inn, Barrister-at-Law. 1936. Demy 8vo. pp. (with Index) 232. London: Edward Arnold and Co. 10s. 6d. net.

This little book may be truly said to "fill a gap." Forensic medicine has often been treated technically, and its criminal aspects are well covered, but the civil liabilities of doctors have been strangely neglected, and this work breaks fresh ground in its thorough summary of them. The simplicity of its presentation of legal problems will, of course, primarily appeal to the non-legal reader, and its chief end is clearly the enlightenment of the general medical practitioner, but few lawyers could miss having their knowledge of this subject clarified by a study of these pages.

Books Received.

The Gold Clause. Vol. II—New Decisions of Various Supreme Courts. Second Edition, 1936. By Arpad Plesch, Dr. Jur. (formerly of the Hungarian Bar). Crown 4to. pp. vii and 106. London: Stevens & Sons, Ltd. 7s. 6d. net.

Prideaux's Forms and Precedents in Conveyancing. Twenty-third Edition, 1936. By Ronald Martin Cunliffe Munro, B.A., and Sir Lancelot Henry Elphinstone, M.A., formerly Chief Justice of the Federated Malay States, both of Lincoln's Inn, Barristers-at-Law. Vol. II. pp. xcv and (with Index) 1,192. London: Stevens & Sons, Ltd; The Solicitors' Law Stationery Society, Ltd. Three Volumes. £6 6s. net.

Fingerprints. The Numerical Index or Fingerprints Revolutionised. By F. Brewester. 1936. Royal 8vo. pp. viii and (with Index) 242. Calcutta: The Eastern Law House. Price, Rs. 5.

Pension and Widows' & Orphans' Funds. By D. A. Porteous, Fellow of the Faculty of Actuaries. 1936. Demy 8vo. pp. xii and 111. Cambridge: The University Press. 7s. 6d. net.

The Conveyancer and Property Lawyer. No. 2. December, 1936. London: Sweet & Maxwell, Ltd. 6s. net.

Correspondence.

[*The views expressed by our correspondents are not necessarily those of* The Solicitors' Journal.]

Broadcasting and the Law of Libel.

Sir,—With reference to the discussion of the Law of Libel contained in your Journal at pages 801–803, it may interest some of your readers to know that the Supreme Court of Victoria has held that broadcasting defamatory matter, even from a written script, is slander and not libel—see *Meldrum* v. *Australian Broadcasting Company Ltd.*, 1932, Victorian Law Reports, 425.

E. H. Coghill,
Librarian.

The Supreme Court Library,
Melbourne.
10*th November.*

Notes of Cases.

Judicial Committee of the Privy Council.

Vincent *v.* Tauranga Electric-power Board.

Lord Russell of Killowen, Lord Macmillan, Lord Alness, Sir Lyman Poore Duff, Sir George Rich. 15th October, 1936.

New Zealand—Public Authorities Protection—Electric-power Board—Employee Injured—Action Brought more than Six Months after Accident—Allegation of Breach of Contract—Whether Action Barred—Electric-power Boards Act, 1925 (No. 38), s. 127.

Appeal by special leave *in forma pauperis* from an order of the Court of Appeal of New Zealand dated the 21st July, 1933, dismissing an appeal by the present appellant from an order of the Supreme Court of New Zealand and allowing a cross-appeal by the present respondents from that order of the Supreme Court.

The appellant was a linesman employed by the respondents, a body corporate constituted under the Electric-power Boards Act, 1925, who, among other activities, generated electric power and supplied it to consumers within their area. The appellant (the plaintiff) complained that in 1930, while working in the defendants' employ on a transformer connected with highly-powered lines, he met with an accident as a result of which he suffered severe injuries. In 1932, more than six months after that accident, the plaintiff issued a writ against the defendants in the Supreme Court claiming damages in respect of his injuries. Three months later he delivered an amended statement of claim based (*a*) on a breach of an implied term in his contract of employment with the defendants, and alternatively, (*b*) on a breach by the defendants of their duty to him as a workman employed by them. The defendants by their defence pleaded that the action was barred by s. 117 of the Electric-power Boards Act, 1925, which provides "(1) No action shall be commenced against the Board . . . or other person acting . . . in the execution or intended execution . . . of this Act, for any . . . negligence, or for any act or omission whatever, until the expiry of one month after notice in writing . . .; (2) Every such action shall be commenced within six months next after the cause of action first arose . . ." The question whether that section was applicable to the plaintiff's cause of action was directed to be tried before the action. Smith, J., held (1) that, if the plaintiff could show circumstances from which the alleged contract could be implied, the section would not bar the action, and (2) that, so far as the claim rested solely on the defendants' omission to perform a statutory duty, the section barred the action. The plaintiff appealed against the second holding, and the defendant appealed against the first. The Court of Appeal dismissed the appeal and allowed the cross-appeal.

Lord Alness, delivering the judgment of the Board, said that the question turned on the proper construction of s. 127 and its application to the facts of the case. Counsel for the appellant had invoked certain decisions pronounced in England under the analogous Public Authorities Protection Act, 1893. Those decisions fell to be handled with care, as the wording of the two statutes differed in material particulars. Their lordships could not doubt that this was an action against the respondents for something done or omitted to be done in the execution or intended execution of the Act. The statutory words were characterised by the utmost amplitude and seemed to leave the appellant no loophole of escape. It mattered not whether the appellant's claim were regarded as based on implied contract or on tort. The nomenclature employed appeared, in the circumstances, to be immaterial. Whether the cause of action were in implied contract or in tort, it sounded in breach of one of the Electrical Supply Regulations. In any event, the first alternative claim seemed to their lordships difficult to maintain. It was admitted by counsel for the appellant that, if his argument were sound, the doctrine of implied contract might have been invoked in any action of damages by a workman against his employer for breach of the Factory Acts. On analysis, the contract on which the appellant relied was found to be peculiar, being a contract by the employer to observe the requirements of the statutory regulation, in other words, to obey the law. The employer had no option to do otherwise. Their lordships would accordingly advise that the appeal should be dismissed.

Counsel: *W. N. Stable*, K.C.; *J. Buckley & Mills*, for the appellant; *Henn Collins*, K.C., and *A. Ross*, for the respondents.

Solicitors: *T. E. Crocker & Son*: *Wray, Smith & Halford.*

[Reported by R. C. Calburn, Esq., Barrister-at-Law.]

Court of Appeal.

Wilson Box (Foreign Rights) Ltd. (In Liquidation) *v.* Brice (Inspector of Taxes).

Slesser, Romer and Greene, L.JJ. 23rd November, 1936.

Revenue—Income Tax—Company Formed to Deal with Patent Rights—Rights Acquired—Voluntary Liquidation—Sale by Liquidator of Rights at a Profit by Way of Realising Assets—Whether a Trading Profit Assessable to Tax.

Appeal from a decision of Lawrence, J. (80 Sol. J. 836).

In 1932, a company, owning certain patent rights, contemplated selling them to one, Lago, and one, Leigh, for £50,000, but as it was feared that a direct sale might attract a claim for income tax, it was decided to form another company to acquire those rights for a nominal sum, and that the shareholders of the new company should sell their shares to the purchasers for £50,000. In July, 1933, the respondent company was formed with a capital of £2,500, its objects, as stated in the memorandum and articles of association, being to acquire the patent rights in question, to develop and grant licences in respect of them, and to sell or otherwise dispose of the whole or any part of the undertaking. This company acquired the patent rights for £2,500, and its shareholders agreed with Lago and Leigh to sell them their shares for £50,000, but these gentlemen, having paid sums under the agreement amounting to £13,500, refused to complete the transaction. The vendors brought an action against them which was settled. By the settlement, the agreement for the sale of the shares for £50,000 was cancelled; the company was put into liquidation; and the liquidator was authorised to sell to Lago and Leigh for £20,000 a part of the patent rights held by the respondent company. The settlement was implemented by the necessary resolutions of the company, including one that the £20,000 should be distributed among the shareholders and be treated as part distribution of the assets in the liquidation of the company. The £13,500 already paid to the company was by the settlement to be treated as part of the £20,000 and was to be distributed by the liquidator as such. An assessment having been made on the company for the year ending the 5th April, 1935, in the sum of £20,000, Lawrence, J., held that they were not liable to be so assessed.

Slesser, L.J., dismissing the appeal of the Crown, referred to the Companies Act, 1929, ss. 248 (1), 191 (1) and 228, and to *In re Wreck Recovery and Salvage Co.*, 15 Ch.D. 353, at p. 362, and *Commissioners of Inland Revenue* v. *Burnell* [1924] 2 K.B. 52, at p. 67, and said that there was no reason to suppose that the liquidator was doing anything but his mere duty as such. At no time after purchasing the patent rights did the company sell any of them before the time of the liquidation, and it was a confusion to have regard to the transactions of the shareholders. It was not relevant to consider what might have been the motive of the company which originally held the patent rights nor the arrangement made by Lago and Leigh with the shareholders. Further,

the mere fact that there was power under the memorandum to sell the undertaking did not afford evidence that in this particular matter the company were acting under the memorandum. The liquidator was realising the assets, and in this sale he acted under the powers given him by reason of the resolution in the voluntary winding up. There was no evidence that he acted in any other capacity.

ROMER and GREENE, L.JJ., agreed.

COUNSEL: *The Solicitor-General* (Sir Terence O'Connor, K.C.) and *R. Hills: Needham*, K.C., and *Scrimgeour*.

SOLICITORS: *Solicitor of Inland Revenue: Johnson, Weatherall, Sturt & Hardy.*

[Reported by FRANCIS H. COWPER, Esq., Barrister-at-Law.]

In re **A Judgment Debtor (No. 1539 of 1936).**

Slesser, Romer and Greene, L.JJ.
27th November, 1936.

BANKRUPTCY—PRACTICE—DEBTOR AIRMAN ON AUSTRALIAN FLIGHT—SUBSTITUTED SERVICE OF BANKRUPTCY NOTICE—SENT TO HIS LONDON PLACE OF BUSINESS AND ALSO CARE OF HIS SOLICITORS—WHETHER GOOD NOTICE—BANKRUPTCY RULES, R. 156.

Appeal from a decision of Mr. Registrar Kean.

On the 27th July, 1936, the creditors obtained a judgment against the debtor to whose solicitors their solicitors sent a letter on the 30th July, saying that they had issued a bankruptcy notice against him on behalf of their clients and asking for an appointment to serve him with a copy. The debtor's solicitors replied: "As you doubtless have seen in the newspapers, the debtor left on his Empire flight yesterday, and is now, we hope and believe, on his way to the Antipodes. In these circumstances, we fear that it is really impossible for us to arrange an appointment for you to serve him with the bankruptcy notice which you have seen fit to issue. We believe, however, that he will be back in this country in about three weeks' time, when doubtless something can be arranged." After further correspondence, the creditors' solicitors wrote to the debtor's solicitors on the 26th August: "We beg to give you notice that we have issued an order for substituted service of the bankrupcty notice by registered post addressed to your client at Sardinia House, Kingsway, and also addressed to him c/o yourselves. The order has to-day been drawn and letters posted in accordance with the same." (Sardinia House was the debtor's place of business.) The Registrar dismissed an application to set aside the *ex parte* order for substituted service.

SLESSER, L.J., allowing the debtor's appeal said that *Porter* v. *Freudenberg* [1915] 1 K.B. 857, at p. 889, set out the relevant considerations when application was made for substituted service. The court was there considering the general principle that the defendant should not by reason of defective notice be condemned unheard because he had no notice of the proceedings against him. If there was any distinction between the Bankruptcy Rules and the Rules of the Supreme Court, it should be in favour of a more rigorous interpretation of the Bankruptcy Rules. The principles in *Porter* v. *Freudenberg* were entirely of general application. Here the notice gave under the law certain rights to the person against whom the act of bankruptcy was alleged, to save himself from the consequences. The order said that if within seven days he paid the creditors, he might be acquitted of all the consequences flowing from a failure to pay. The court must have regard to that. Both in relation to the act of bankruptcy and the petition, such a case was carefully safeguarded by the Bankruptcy Rules, r. 156, dealing with substituted service. Here, these notices could not have been effective to give the debtor his necessary rights under the Act. The notice sent care of his solicitors was not a notice to him through his agents. This was no more than another way of giving him notice at a different address. The solicitors could not be sufficient agents for that purpose. The debtor had to decide within seven days whether or not he would pay. The solicitors could not decide that. The manner of service directed by the registrar did not give the debtor notice satisfying r. 138. No notice had been lawfully served.

ROMER and GREENE, L.JJ., agreed.

COUNSEL: *Serjeant Sullivan*, K.C., and *N. Lawson*; *C. N. Davis*.

SOLICITORS: *D. W. Plunkett*; *Woolfe & Woolfe*.

[Reported by FRANCIS H. COWPER, Esq., Barrister-at-Law.]

High Court—Chancery Division.

In re **Lewis's Will Trusts; O'Sullivan** *v.* **Roberts.**

Bennett, J. 20th November, 1936.

WILL—CONSTRUCTION—SECURITIES "OR THE INVESTMENTS REPRESENTING THE SAME"—MONEY DEPOSITED AT BANK AND ARMY AND NAVY STORES—WHETHER WITHIN CLAUSE.

A testator who died in February, 1936, made a will containing the following clause: "I bequeath the following securities (or the investments representing the same at the date of my death, if they shall have been converted into other holdings) namely . . . £2,000 4 per cent. mortgage debenture redeemable stock of Associated Electrical Industries Ltd. to my trustee," upon certain trusts. On the 19th July, 1935, those securities had been redeemed and the £2,200 redemption moneys were credited to the testator's current account at Lloyds Bank. At that date, £314 4s. 3d. was already standing to his credit, and £400 was at his request transferred to his deposit account. On the 23rd July, he deposited with the Army and Navy Stores Ltd. £1,000, carrying interest at 3 per cent. per annum, and two sums of £500, carrying interest at 2½ per cent. The question arose whether the bequest of the securities had been adeemed or took effect so as to pass any interest in the testator's estate.

BENNETT, J., in giving judgment, said that the bequest had not been adeemed, the provision in parenthesis having been inserted for the express purpose of preventing ademption. The question was whether the money placed on deposit was an investment within the meaning of the clause. No express authority decided that money on deposit was not an investment. *In re Price* [1905] 2 Ch. 55 turned entirely on the context. The sum of £200 of the £400 deposited at Lloyds Bank and the £2,000 deposited at the Army & Navy Stores Ltd. were investments, at the date of the testator's death, representing the security, and passed as such.

COUNSEL: *E. Riviere*; *Prendergast*; *Overton*; *Hon. Denys Buckley*.

SOLICITORS: *Durnford & Son*; *Tyrrell Lewis & Co.*

[Reported by FRANCIS H. COWPER, Esq., Barrister-at-Law.]

High Court—King's Bench Division.

Williams and Others *v.* **Crumlin Valley Collieries Ltd.**

Lawrence, J. 22nd and 23rd October, 1936.

COAL MINES—QUOTAS FOR OUTPUT, EXPORT AND INLAND SUPPLY—EXCEEDING QUOTAS—PENALTIES—CALCULATION—COAL MINES ACT, 1930 (20 & 21 Geo. 5, c. 34).

Action by the trustees of the Executive Board of the South Wales District (Coal Mines) Scheme, 1930, to recover penalties for alleged breaches by the defendants of the provisions of the scheme.

By the Coal Mines Act, 1930, a general scheme was provided for regulating the respective outputs of collieries in various districts. Schemes drawn up under the Act have dealt not only with output but also with supply, establishing a quota for output, one for export supply and one for inland supply. By the Act, arrangements might be made whereby the output of coal might exceed the quota fixed for a mine, so long as the

output from some other mine in the district was correspondingly lower than the quota fixed for that other mine. That provision was carried into the scheme, and accordingly applied also to export and inland supply quotas. The defendant company were allotted an output quota of 51,227 tons, and export and inland supply quotas of 7,756 and 43,118 tons respectively. They subsequently entered into arrangements whereby they increased their output quota to 69,579 tons, and increased the other two quotas so that they exceeded the increased output quota by some 4,000 tons. They were unable to acquire enough output quota to make up the difference, but produced nearly up to the inland and export supply quotas, thus exceeding their output quota by nearly 4,000 tons. The plaintiffs brought the present action in respect of that admitted excess. Clause 32 of the scheme provides, subject to exceptions, that no coalowners shall produce or supply more coal than their quota, contravention being met by penalties prescribed by cl. 50. That clause prescribes penalties to be paid for exceeding output and inland or export supply quotas and provides by sub-cl. (1) (*a*) that the excesses over export supply and over inland supply quotas are to be ascertained and added together and then compared with the excess over the output quota, and the penalties are to be calculated on "the greater of the said two amounts." By sub-cl. (1) (*b*), if there is an excess only over the supply quotas, either or both, the penalty is calculated on the aggregate excess. By sub-cl. (1) (*c*) the penalty is fixed at 2s. 6d. per ton.

LAWRENCE, J., said that the question turned on the construction of cls. 32 and 50 of the Scheme of 1930. The defendants argued that sub-cl. (1) (*a*) did not apply, because there was no excess tonnage ascertained within the meaning of the clause, since they had not exceeded their export and inland supply quotas. They said that there was nothing to compare with the excess of output, and that the words "the greater of the said two amounts" could have no application, because the word "amounts" was not properly applicable to the figure "0." They had also referred to sub-cl. (1) (*b*) as being in their favour. He (his lordship) had come to the conclusion that that contention was wrong, that sub-cl. (1) (*a*) was applicable to the present case, and that it was possible to compare the excess output with the figure "0." He did not think it was doing violence to the language of the sub-clause to say that it was possible to ascertain an excess tonnage which did not exist. If, as ascertained, it proved to be nothing, that could be compared with the excess of output. Sub-clause (1) (*b*) was introduced in order to provide that, where there was no excess output, there was no comparison but merely an addition of two excesses, if there were two, namely, those of inland and export supply. That seemed to be a fair and intelligible reading of the clause, and accorded with the prohibition in cl. 32 against exceeding the output quota. The defendants contended that there was no penalty if there was an excess of output, but none of inland and export supply, while admitting that there could be a penalty if there were an excess of 1 ton for inland and 1 ton for export supply. He (his lordship) thought that the plaintiffs were entitled to recover the penalties claimed, particularly having regard to the power given to individual collieries to make arrangements for acquiring extra supply quota outputs.

COUNSEL: *Lionel Heald*, for the plaintiffs; *H. V. Rabagliati*, for the defendants.

SOLICITORS: *Savage Cooper & Wright*, agents for *W. H. F. Barklam*, Cardiff; *Furniss Stephen & Co.*, agents for *A. J. Prosser*, Cardiff.

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

CORRECTION.

In re Mills; Marriott *v.* Mills.

We regret that in the report of this case at pp. 975–6 of our issue of the 5th December, the citation to *In re Bradfield* was given incorrectly. The correct citation is [1914] W.N. 423.

Russell *v.* Criterion Film Productions Ltd. and Another.

Porter, J. 21st, 22nd, 23rd, 26th, 27th, 28th, 29th October; 6th November, 1936.

NEGLIGENCE—FILM PRODUCTION—EXCESSIVE LIGHTING—PERFORMER BURNED—CAMERAMAN EMPLOYED BY FILM COMPANY—RISK OF BURNING KNOWN TO COMPANY BUT NOT TO PERFORMER—CAMERAMAN EMPLOYED TO ADVISE ON LIGHTING EFFECTS FOR FILM, BUT NOT AS TO DANGERS—LIABILITY OF COMPANY.

Action for damages for personal injuries.

The plaintiff, a film actress, was employed by the first defendants to act in a film. The first defendants engaged the second defendant, one, Krampf, to act as a cameraman. The plaintiff attended at the studio hired by the first defendants on two days in October, 1935. The scene in which the plaintiff's services were required was one which required very brilliant lighting. The plaintiff had not previously acted in such bright light. The lighting, however, was not of super-normal power or intensity. When the plaintiff reached home at the end of the second day, she was suffering from severe burning, which increased until it caused her intense pain, and to all intents rendered her blind. The lights were not kept on unreasonably long. She accordingly brought this action, alleging that the first defendants had used lighting which, as they knew or ought to have known, gave off rays liable to cause injury to persons exposed to them.

PORTER, J., said that there was no doubt that the plaintiff had suffered, at any rate temporarily, from a severe burning of the eyes. The burning was caused by both ultra-violet and infra-red rays, and was due to the ordinary effect of extremely bright lighting such as was used from time to time in scenes like that here. The direct physical effect had lasted over a month. Such intense lighting was not used very frequently, and the defendants knew of its dangers and its possible effects on the eyes. Their object had been to make a good picture, and they had been prepared to risk temporary damage to performers' eyes in order to obtain a good result. It had, indeed, been their case that what they called "Kleig" eye was a well-known risk of the profession which all performers took, because they either knew or should have known of its possibility. He (his lordship) found, however, that the danger of "Kleig" eye was not generally known to the performers in film production. Not more than a few of the performers realised that they were exposing themselves to the risk of agonising pain and temporary blindness. The plaintiff, so far from knowing of any such risk, had, he (his lordship) found, genuinely feared for about a week that she was going blind. Those findings were, in his view, conclusive against the first defendants, because the plaintiff's injury was due to the system adopted by them in order to get a good picture. Those findings made it unnecessary to determine where the line between "*volenti*" and "*scienti*" was to be drawn and to what bounds the doctrine illustrated in *Smith* v. *Charles Baker & Sons* [1891] A.C. 325, and *Monaghan* v. *W. H. Rhodes & Son* [1920] 1 K.B. 487, was to be extended. Moreover, they disposed of any defence of common employment, since it was the system itself which was at fault, and not the negligent act of a fellow servant in carrying out his duties. They also made it unnecessary to consider whether the producer, or, indeed, the second defendant, were fellow servants of the plaintiff, as in *Howells* v. *Landore Siemens Steel Co. Ltd.* (1874), L.R. 10 Q.B. 62, or were the "*alter ego*" of the defendant company. (See *Rudd* v. *Elder Dempster and Co. Ltd.* [1933] 1 K.B. 566.) Further, whatever Krampf's position may have been, the defendants did not employ him to regulate or control the lighting so as to ensure the safety of the performers. They took that risk on themselves and merely left him to make a good picture. He was merely asked to advise as an artist what lighting would be effective to make a good picture, and not as to its consequences

otherwise. The defendant company had, it was true, asked Krampf for brilliant lighting, and he had acceded to their request. But he had not taken any responsibility for its effect on the performers, nor had he been asked to decide as to its safety. No doubt the making of a good picture required special knowledge and skill with regard to the lighting required, but, except to the extent that the defendant company consulted him in that matter, Krampf in no way regulated, managed or controlled the lighting. No duty was imposed on Krampf and no negligence on his part established. There must be judgment for the plaintiff against the first defendants, and judgment for Krampf against her.

COUNSEL: *Thomas*, K.C., and *R. J. White*, for the plaintiff; *Edgar Dale*, for the defendant company; *Paul Springman*, for the second defendant.

SOLICITORS: *Syrett & Sons; L. Bingham & Co.; F. M. Guedalla & Co.*

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

Bullingdon Rural District Council *v.* Oxford Corporation.

Singleton, J. 23rd, 24th November; 4th December, 1936.

LOCAL GOVERNMENT—FINANCIAL ADJUSTMENT—SUM PAID INCLUDING ITEM CLASSED AS INTEREST—INCOME TAX DEDUCTED BY AUTHORITY MAKING PAYMENT—RECEIPT UNDER SEAL ACCEPTING DEDUCTION GIVEN BY AUTHORITY RECEIVING PAYMENT—TAX HELD BY REVENUE AUTHORITIES TO BE NOT DEDUCTIBLE—RIGHT OF RECIPIENTS TO RECOVER SUM DEDUCTED.

Action to recover money alleged to have been received by the defendants to the use of the plaintiffs.

Under the Oxford Extension Act, 1928, the boundaries of the City of Oxford were altered and extended in such a manner that a financial adjustment became necessary between the defendants and the Headington Rural District Council, to all of whose rights the plaintiff council succeeded. A settlement was negotiated between the plaintiffs and defendants as a result of which the defendants sent the plaintiffs a cheque for £6,759 5s. in completion of the adjustment. Part of that sum was made up of an amount of £979 by way of interest, from which the defendants deducted and retained £244 15s. as income tax. The plaintiffs thereupon, on the 10th January, 1933, gave the defendants a receipt or release under seal in respect of the sum paid, in the following terms: "Received from . . . Oxford . . . £6,759 5s. . . . in full satisfaction and discharge of all claims . . . of . . . Bullingdon . . . upon . . . Oxford in connection with . . . the alteration of the boundaries of the city under the Oxford Extension Act, 1928 . . ." and the sums, including the interest, of which the total was composed, together with the amount of tax deducted, were specified. In 1934 the revenue authorities informed the defendants that the sum from which the defendants had deducted tax was a capital sum, and that income tax was accordingly not deductible. In reply to this intimation and to requests by the plaintiffs for return of the £244 15s., the defendants stated that the total sum paid by them had been acknowledged by the defendants under seal as in full satisfaction, and that they, the defendants, were unwilling to reopen the matter. The plaintiffs accordingly brought the present action. *Cur adv. vult.*

SINGLETON, J., observed that the basis of settlement, whereby the sum paid by the defendants had been arrived at after a calculation of interest and whereby income tax had been deducted, had been accepted. Both sides appeared to have thought the deduction right. If income tax was payable on the interest, it was properly deducted under s. 19 (1) of the All Schedules Rules of the Income Tax Act, 1918. It was assumed that the defendants would account for it. If they had done so, the plaintiffs would have had the benefit of the sum deducted. If the defendants had paid the sum to the revenue authorities, the plaintiffs would have had it back if tax had proved not to be payable. He (his lordship) could not help thinking that it would have tended to promote good feeling between neighbouring local authorities if the defendants had paid over the comparatively small sum in question. The only matter for him, however, was whether the plaintiffs were entitled to succeed in the action. It was, he thought, clear that, in order to succeed, they must show that income tax was not payable on the interest. It was not enough to say that the inspector of taxes was not asking for the tax. With regard to that, counsel for the plaintiffs had referred to *Re National Bank of Wales Ltd.* [1899] 2 Ch. 629; *Commissioners of Inland Revenue* v. *Ballantine* (1924), 8 Tax Cas. 595, at p. 610; *Simpson* v. *Maurice's Executors* (1929), 45 T.L.R. 581. He (his lordship) was not sure that the present case was covered by any of the authorities cited to him. At one time he had inclined to the view that tax was payable, the case being covered by r. 1 of the rules applicable to Case III of Sched. D of the Act of 1918. The fact, however, that s. 62 of the Local Government Act, 1882, under which the financial adjustment here was made, made no provision for payment or allowance of interest, and dealt with capital, pointed to a different conclusion. It was, however, unnecessary to express a definite view on the question, because he did not see how the defendants could now be heard to say that tax was not chargeable. If the parties had been wrong in their view on that point, that was a mistake of law. There had been no fraud or concealment. The settlement had been expressed to be in full satisfaction of all claims. It was not a case where the contract had been entered into under a mistake as to the present existence of an essential fact recognised by law as the foundation of the contract. The money had not been received to the use of the plaintiffs; it was a deduction which both parties believed the defendants to be entitled to make. There must be judgment for the defendants.

COUNSEL: *H. J. Wallington*, K.C., and *E. J. Rimmer*, for the plaintiffs; *Cyril Radcliffe*, K.C., and *M. FitzGerald*, for the defendants.

SOLICITORS: *John J. McIntyre; Sharpe, Pritchard & Co.*, agents for *A. Holt*, Town Clerk, Oxford.

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

R *v.* Lewis: *Ex parte* Director of Public Prosecutions. R *v.* Williams: *Ex parte* Same. R. *v.* Valentine: *Ex parte* Same.

Lord Hewart, C.J., Swift and Macnaghten, JJ. 7th December, 1936.

CRIMINAL LAW—PROCEDURE—REMOVAL OF TRIAL TO CENTRAL CRIMINAL COURT—DISAGREEMENT OF JURY AT FIRST TRIAL—LOCAL FEELING—CENTRAL CRIMINAL COURT ACT, 1856 (19 & 20 Vict. c. 16), s. 3.

Rule *nisi* for the removal to the Central Criminal Court of the second trial of the accused, Lewis, Williams and Valentine.

Section 3 of the Central Criminal Court Act, 1856, provides for the removal of a trial to the Central Criminal Court where such a removal appears to the King's Bench Division to be expedient in the interests of justice. The defendants in the proceedings in question had been charged on indictment at Caernarvon Assizes with arson and malicious damage to a Government aerodrome, or property connected with it. Great local feeling had been aroused against the aerodrome. At the assizes large groups of people assembled outside the court and there were some disturbances. The defendants, in their evidence, admitted having set fire to the property, but the jury disagreed. It was submitted by the Attorney-General that the main purpose of the Act of 1856 was to have the trial of an accused person removed to the Central Criminal Court where local feeling was such that a verdict one way or the other might be the subject of violent approval or disapproval locally. It was contended in support of the rule that it had not been shown to be expedient to the ends of

justice that the trial should be removed from Caernarvon; that, whereas it had been suggested that the court could make an order under s. 3 of the Act of 1856, where local feeling was such that a verdict in a trial held locally might be the subject of violent approval or disapproval locally, that was not a tenable contention because, if it were sound, no trial which excited national sentiment or national interest could be held at all; and that the King's Bench Division had nothing to do with how persons in the locality viewed a trial, or whether a trial excited violent feeling on one side or the other. It was further argued that there was no precedent for the removal of a trial after a disagreement of the jury, in the absence of such special circumstances as an attempt to interfere with witnesses. No such circumstances existed in the present case, and it would be dangerous to set up such a precedent. Counsel also contended that the real ground for the application for the removal of the trial was that there ought to have been a conviction, that it was unreasonable for the jury to disagree, and that a fair trial could not be had at Caernarvon. Those considerations were irrelevant on an application under s. 3 of the Act of 1856. The Attorney-General said that the application did not involve the view that no fair trial could be had anywhere in Wales, and that, if the court thought it proper to order the trial to be held at Cardiff, he would not object to that course being taken.

Lord Hewart, C.J., said that the rule ought to be made absolute. In view of the circumstances disclosed by the affidavits, he was satisfied that the order asked for was expedient to the ends of justice. At that juncture it was best not to dwell on the matter. The Attorney-General had thought it right to throw out the suggestion that the indictment might be removed to Cardiff. That suggestion was made to meet a complaint that the removal of the trial as asked for was to the Central Criminal Court. There was not the slightest ground for any such complaint. Section 3 of the Act of 1856 provided that, in certain circumstances, the court might order persons to be tried at the Central Criminal Court. It did not appear to be within the terms of that section, nor within the terms of the rule *nisi* which had been granted in the present case, for the court to direct that the trial should take place at Cardiff, nor did the court think that there was any ground for doing so. The rule *nisi* would be made absolute in the terms in which it was made.

Swift and Macnaghten, JJ., agreed.

Counsel: *Norman Birkett*, K.C., *Edmund Davies*, and *Dudley Collard*, showing cause; *The Attorney-General* (Sir Donald Somervell, K.C.), *W. N. Stable*, K.C., and *Bertram Reece*, in support.

Solicitors: *W. H. Thompson; Director of Public Prosecutions.*

[Reported by R. C. Calburn, Esq., Barrister-at-Law.]

Chancery of Lancaster (Manchester District).

London Midland & Scottish Railway Company *v.* The Ribble Hat Works Limited.

Bennett, V.-C. 3rd, 4th and 16th November, 1936.

Railway Signals—Interfered with by "Neon" Sign Whether a Good Cause of Action—Negligence—Nuisance—Breach of a Statutory Duty.

In this action the plaintiffs by their statement of claim alleged that they were the owners of and under statutory powers worked a railway between Preston and Blackpool, and for that purpose maintained signals near Tulketh Brow, Ashton, operating on red light to indicate that the line was not clear and on green light to indicate that the line was clear; that the defendant, being the owner or occupier of adjacent works separated from the railway only by a roadway had installed thereon facing the railway a "Neon" sign representing a hat coloured green with words on either side coloured red; that such sign interfered with the effective, proper and safe working of the plaintiff's railway and its signals and constituted a danger to the safe working of the said railway, and that the defendant had wrongfully refused to remove or alter the said sign; and the plaintiffs claimed a declaration that the defendant was not entitled to maintain a sign which interfered with or endangered the safe working of the railway, an injunction and damages accordingly. By para. 6 of their defence the defendants objected in point of law that the alleged interference and danger (which were denied) did not create and were incapable of creating any legal liability on the part of the defendant to refrain from using or lighting up the said sign and that the statement of claim disclosed no cause of action against the defendant. Pursuant to an order made on the 12th October, 1936, the point of law so raised was argued on the 3rd and 4th November, 1936. *Cur. ad. vult.* On the 16th ——

The Vice-Chancellor, after referring to the pleadings and stating that for the purposes of his judgment on the point of law he must assume the allegations in the statement of claim to be true, and that the plaintiffs founded their arguments on three grounds, said: "Dealing first with the question of negligence, in order to maintain an action for negligence there must be some duty owed by the defendant to the plaintiff. If the defendant, as in the present case, used his lands or premises for a purpose which is not in itself dangerous or in ordinary circumstances likely to cause danger, he cannot in my view be held guilty of negligence, unless he knows that there are special circumstances which make it dangerous for him to do a certain act and without any necessity he does that act or continues to do the act after knowledge of its danger." After referring to *M'Alister* v. *Stephenson* [1932] A.C. 562, 618, the Vice-Chancellor continued: "In my judgment the standards of a reasonable man would not permit him to exhibit red or green lights in proximity to a railway if he knows he is causing danger thereby. I find that the defendants are guilty of negligence in continuing to exhibit their light knowing that it is causing danger to the railway." On the question of nuisance, after referring to *Eastern & S. African Telegraph Co.* v. *Cape Town Tramways Co.* [1902] A.C. 381, 392, 393; *Robinson* v. *Kilvert*, 41 C.D. 88, and *Kine* v. *Jolly* [1905] 1 Ch. 489, the Vice-Chancellor said: "In deciding this question I must consider whether the railway company can be considered to be exercising ordinary rights which, according to the ordinary notions of mankind they are entitled to exercise in relation to their neighbours and in relation to their property. The railway companies acquire their land under statutory powers and carry on their undertakings under statutory powers. Signals are maintained for the safe working of this railway, and red and green lights are used for signalling purposes. In my view in carrying on the railway in this way the plaintiffs are exercising ordinary rights having regard to the circumstances, and rights which according to the ordinary notions of mankind they are entitled to exercise in relation to their neighbours and in relation to their property . . . In considering whether a man is applying his property to special uses so as to disentitle him to maintain an action for nuisance all the circumstances must be looked at, and each case must, in my opinion, be judged on its merits. In this case, on the facts which are to be assumed as established, I hold that the defendants are committing a nuisance." He was not prepared to hold that there was any special statutory duty binding on the defendants in this case. The costs of the issue would be the plaintiffs' in any event.

Counsel: *G. J. Lynskey*, K.C., and *E. Ackroyd*, for the plaintiffs; *H. P. Glover*, K.C., and *C. L. J. Holt*, for the defendants.

Solicitors: *Alexander Eddy*, for the plaintiffs; *James Chapman & Co.*, for *John Cookson & Son*, Preston, for the defendants.

[Reported by R. A. Forrester, Esq., Barrister-at-Law.]

Obituary.

MR. C. N. T. DAVIS.

Mr. Charles Nathaniel Tindale Davis, B.A., Barrister-at-Law, of King's Bench Walk, Temple, died on Saturday, 19th December, at the age of sixty-two. Mr. Tindale Davis was called to the Bar by the Inner Temple in 1896, and practised on the Oxford Circuit. He was a Bencher of the Inner Temple.

MR. A. G. EDWARDS.

Mr. Arthur Gordon Edwards, solicitor, head of the firm of Messrs. T. S. Edwards & Son, of Newport, Mon, and Risca, died recently at Abercarn. Mr. Edwards was admitted a solicitor in 1910.

MR. J. W. MARSDEN.

Mr. John Westall Marsden, J.P., solicitor, head of the firm of Messrs. Marsden & Marsden, of Blackburn, died in Manchester on Monday, 14th December, at the age of seventy-seven. Mr. Marsden, who was admitted a solicitor in 1895, had been a borough magistrate since 1906. He was an ex-president of the Blackburn Law Society.

MR. A. H. NEVE.

Mr. Arthur Henry Neve, County Coroner for West Kent District, died at Tonbridge on Tuesday, 15th December. Mr. Neve formerly practised as a solicitor, and was Clerk to the Tonbridge Urban District Council.

MR. C. E. WILSON.

Mr. Charles Eustace Wilson, solicitor, Town Clerk of East Ham, died at his home in London on Tuesday, 15th December, at the age of sixty-four. Mr. Wilson, who was educated at Rugby, was admitted a solicitor in 1896. He had been Town Clerk of East Ham for twenty-seven years.

Societies.

University of London Law Society.

The annual meeting of the University of London Law Society was held at University College, Gower Street, on Tuesday, 8th December. The following were elected officers for the ensuing year: President, Mr. F. E. C. Wood; Hon. Treasurer, Mr. R. S. Gill; Hon. Secretary, Mr. D. Sacker; Committee: Messrs. I. W. Davies-Levy, C. H. G. Wood, D. H. R. Davis; Press representative, Mr. J. L. Flood. Mr. O'Connell Stranders (Barrister-at-Law) was the winner of the Best Speaker's Cup.

The Union Society of London.

(101ST YEAR.)

A meeting of the Society was held at the Middle Temple Common Room, on Wednesday, the 16th December, at 8.15 p.m., the President (Mr. S. R. Lewis) being in the chair. Mr. P. A. Picarda proposed the motion "That the activities of Communists form no excuse for the Germano-Japanese pact." Mr. Melville Buckland opposed, and Mr. D. W. Dobson (Hon. Treasurer), Mr. Hurle Hobbs, Mr. E. J. Rendle (Vice-President), Mr. Sandilands and Mr. J. P. R. Oakes also spoke. Mr. Picarda replied. Upon division the motion was carried by eight votes.

United Law Society.

Lord Justice Greene presided at the annual dinner of the United Law Society held at the Café Royal on Monday, 14th December. The guests included: The Hon. Mr. Justice Swift, The Hon. Mr. Justice du Parcq, Mr. F. E. J. Smith (Vice-President of The Law Society), The Marquess of Reading, K.C., Mr. Raymond Evershed, K.C., Sir Giles Gilbert Scott, R.A., Mr. Ivor Beck, F.R.C.S., and Sir Edmund Cook, C.B.E. (Secretary of The Law Society). The following officers of the United Law Society were also present: Mr. Henry Everett (Chairman), Mr. R. E. Ball (Vice-Chairman), Mr. F. Howard Butcher (Treasurer), Mr. J. H. Vine Hall and Mr. R. J. Kent (Secretaries), Mr. F. R. McQuown (Reporter), Mr. H. Wentworth Pritchard (Organiser of the Poor Man's Lawyer), Mr. S. E. Redfern and Mr. G. B. Burke (Trustees), Mr. F. W. Yates and Mr. T. R. Owens (Auditors). The total number present at the dinner was 152.

Rules and Orders.

THE COUNTY COURT DISTRICTS (GREENWICH AND WOOLWICH) ORDER, 1936, DATED DECEMBER 8, 1936.

I, Douglas McGarel Viscount Hailsham, Lord High Chancellor of Great Britain, in exercise of the powers conferred upon me by subsection (2) of Section 2 of the County Courts Act, 1934,* and all other powers enabling me in this behalf, Do hereby order as follows:—

1. The District of the County Court of Kent held at Greenwich and Woolwich (hereinafter called the existing Court) shall be divided into two Districts in the manner following:—

(*a*) The area within the boundaries set out in the first Schedule to this Order shall form a separate district in which a Court shall be held at Greenwich by the name of Greenwich County Court.

(*b*) The area within the boundaries set out in the second Schedule to this Order shall form a separate district in which a Court shall be held at Woolwich by the name of Woolwich County Court.

2. The Greenwich County Court and the Woolwich County Court shall have concurrent jurisdiction to deal with any proceedings which shall be pending in the existing Court when this Order comes into operation:

Provided that the Registrar of these Courts, under the direction of the Judge, shall have power to determine in which of the said Courts held at Greenwich and Woolwich respectively any such proceedings shall be continued after the commencement of this Order.

3. This Order may be cited as the County Court Districts (Greenwich and Woolwich) Order 1936, and shall come into operation on the 1st day of January, 1937, and the Orders in Council dated the 9th day of March, 1847,† and the 4th day of September, 1848,‡ respectively and the County Courts (Districts) Order in Council, 1899,§ as amended, shall have effect as further amended by this Order.

Dated the 8th day of December, 1936.

Hailsham, C.

[The boundaries of the areas are set out in the two schedules to the Order, obtainable from H.M. Stationery Office, price 1d. net.]

* 24 & 25 Geo. 5, c. 53. † *London Gazette*, 10th March, 1847.
‡ *London Gazette*, 5th September, 1848.
§ S.R. & O 1899, No 178, printed as amended to 1903. S.R. & O. Rev. 1904, III, County Court, E., p. 1. For subsequent amendments *see* "Index to S.R. & O. in Force, July 31, 1936" at pp. 195–8.

THE LAND REGISTRATION RULES, 1936. DATED DECEMBER 14, 1936.

I, Douglas McGarel Viscount Hailsham, Lord High Chancellor of Great Britain, with the advice and assistance of the Rule Committee appointed in pursuance of section 144 of the Land Registration Act, 1925, do, in exercise of the powers vested in me by that section and all other powers enabling me in this behalf, hereby make the following rules:—

Amendment of the Land Registration Rules, 1930.

1. *Priority given for* 14 *days.*]—In rule 1 (*b*) of the Land Registration Rules, 1930,* the word "fifteenth" shall be substituted for the word "third" before the word "day."

2. *Short title and commencement.*]—(1) These rules may be cited as the Land Registration Rules, 1936.

(2) They shall be read and construed with the Land Registration Rules, 1925,† and the Land Registration Rules, 1930, and shall come into force on the 1st day of January, 1937.

Dated the 14th day of December, 1936.

Hailsham, C.

* S.R. & O. 1930 (No. 211) p. 798. † S.R. & O. 1925 (No. 1093) p. 717.

The following days and places have been fixed for holding the Winter Assizes on the North Eastern Circuit: Mr. Justice Charles and Mr. Justice Singleton.—Monday, 8th February, at Newcastle; Tuesday, 16th February, at Durham; Tuesday, 23rd February, at York; Monday, 1st March, at Leeds.

Parliamentary News.

Progress of Bills.

House of Lords.

Expiring Laws Continuance Bill.
Royal Assent. [18th December.
Firearms Bill.
Reported with Amendments. [15th December.
Public Order Bill.
Royal Assent. [18th December.
Trunk Roads Bill.
Royal Assent. [18th December.

House of Commons.

Beef and Veal Customs Duties Bill.
Read First Time. [17th December.

Legal Notes and News.

Honours and Appointments.

Sir Herbert Brent Grotrian, K.C., has been appointed Chairman of Bedfordshire Quarter Sessions in succession to Mr. A. H. Wingfield.

The Irish Free State Executive Council has announced the appointment of Mr. Justice Timothy Sullivan, President of the High Court, to be President of the Supreme Court and Chief Justice of the Free State, in succession to Chief Justice Hugh Kennedy, who died on 12th December.

Mr. Conor Maguire, K.C., formerly Attorney-General, who was recently appointed a Judge of the High Court, has been appointed President of the High Court.

Chepping Wycombe Town Council have appointed Mr. S. F. A. Clarke, of Bromley, Kent, as Deputy Town Clerk of Chepping Wycombe, and he will take up duties early in the New Year. Mr. Clarke was admitted a solicitor in 1932.

Mr. M. W. Coupe, Clerk and solicitor, Redditch U.D.C., has been appointed Clerk to Tyldesley U.D.C., in succession to Mr. J. R. Cockfield, who has been appointed Clerk to Ennerdale R.D.C.

Mr. H. A. Davis, solicitor, of Exeter, has been appointed Deputy Clerk to the Devon County Council and Deputy Clerk of the Peace. He was admitted a solicitor in 1913.

Notes.

Mr. W. Edgar Stephens, O.B.E., who is to retire at the end of the year from the post of Town Clerk of Great Yarmouth, has been presented with a silver salver and cheque, subscribed for by members of the council, magistrates and officials. Mr. Stephens was admitted a solicitor in 1898.

The Treasurer (Lord Russell of Killowen) and the Masters of the Bench of Lincoln's Inn gave an At Home in the Hall of Lincoln's Inn on the 17th December. The guests were received by the Treasurer and his daughter, The Hon. Margaret Russell. A string band of the Royal Artillery played in the Hall.

At a meeting of the council of The Law Society, the Joseph Travers-Smith Scholarship for the year 1936 was, on the recommendation of the trustees, awarded to Laurence Cecil Bartlett Gower, LL.M., London, who served his articles of clerkship with Mr. William Henry White, of the firm of Messrs. Smiles & Co., of London.

Wills and Bequests.

Mr. George Coplestone Carter, solicitor, of Ottery St. Mary, left £86,264, with net personalty £48,294.

His Honour Judge Joseph Randolph Randolph, K.C., of Crudwell, Wilts, County Court Judge on the Oxfordshire Circuit, left £57,548, with net personalty £41,828.

Mr. George Edward Hilleary, O.B.E., solicitor, of Shanklin, Isle of Wight, and of Mark Lane, E.C., left £41,204, with net personalty £39,862.

Stock Exchange Prices of certain Trustee Securities.

Bank Rate (30th June, 1932) 2%. Next London Stock Exchange Settlement, Thursday, 7th January, 1937.

	Div. Months.	Middle Price 21 Dec. 1936.	Flat Interest Yield.			‡Approximate Yield with redemption		
			£	s.	d.	£	s.	d.
ENGLISH GOVERNMENT SECURITIES								
Consols 4% 1957 or after	FA	115	3	9	7	2	19	10
Consols 2½%	JAJO	84½	2	19	2		—	
War Loan 3½% 1952 or after	JD	105¾	3	6	2	3	0	9
Funding 4% Loan 1960-90	MN	116⅛	3	8	8	2	19	11
Funding 3% Loan 1959-69	AO	101¾	2	18	11	2	17	10
Funding 2½% Loan 1956-61	AO	92½	2	14	1	2	18	9
Victory 4% Loan Av. life 23 years	MS	115	3	9	7	3	1	8
Conversion 5% Loan 1944-64	MN	117¼	4	5	3	2	6	1
Conversion 4½% Loan 1940-44	JJ	107⅞	4	3	6	2	15	11
Conversion 3½% Loan 1961 or after	AO	106¾	3	5	7	3	1	11
Conversion 3% Loan 1948-53	MS	103¾	2	17	10	2	12	0
Conversion 2½% Loan 1944-49	AO	101¼	2	9	4	2	6	3
Local Loans 3% Stock 1912 or after	JAJO	96¾	3	2	0		—	
Bank Stock	AO	376½	3	3	9		—	
Guaranteed 2¾% Stock (Irish Land Act) 1933 or after	JJ	86	3	3	11		—	
Guaranteed 3% Stock (Irish Land Acts) 1939 or after	JJ	96	3	2	6		—	
India 4½% 1950-55	MN	114½	3	18	7	3	2	6
India 3½% 1931 or after	JAJO	98½	3	11	1		—	
India 3% 1948 or after	JAJO	85¾	3	9	11		—	
Sudan 4½% 1939-73 Av. life 27 years	FA	118	3	16	3	3	9	3
Sudan 4% 1974 Red. in part after 1950	MN	114½	3	9	10	2	14	10
Tanganyika 4% Guaranteed 1951-71	FA	115	3	9	7	2	13	11
L.P.T.B. 4½% "T.F.A." Stock 1942-72	JJ	109	4	2	7	2	11	2
Lon. Elec. T. F. Corpn. 2½% 1950-55	FA	94½	2	12	11	2	17	7
COLONIAL SECURITIES								
Australia (Commonw'th) 4% 1955-70	JJ	109	3	13	5	3	7	0
Australia (C'mm'nw'th) 3% 1955-58	AO	96	3	2	6	3	5	2
Canada 4% 1953-58	MS	113	3	10	10	3	0	2
*Natal 3% 1929-49	JJ	101	2	19	5		—	
*New South Wales 3½% 1930-50	JJ	100	3	10	0	3	10	0
*New Zealand 3% 1945	AO	100	3	0	0	3	0	0
†Nigeria 4% 1963	AO	115	3	9	7	3	3	4
*Queensland 3½% 1950-70	JJ	100	3	10	0	3	10	0
South Africa 3½% 1953-73	JD	106	3	6	0	3	0	5
*Victoria 3½% 1929-49	AO	101	3	9	4		—	
CORPORATION STOCKS								
Birmingham 3% 1947 or after	JJ	98	3	1	3		—	
*Croydon 3% 1940-60	AO	101	2	19	5	2	13	1
Essex County 3½% 1952-72	JD	105	3	6	8	3	1	11
Leeds 3% 1927 or after	JJ	96xd	3	2	6		—	
Liverpool 3½% Redeemable by agreement with holders or by purchase	JAJO	106	3	6	0		—	
London County 2½% Consolidated Stock after 1920 at option of Corp.	MJSD	82	3	1	0		—	
London County 3% Consolidated Stock after 1920 at option of Corp.	MJSD	94	3	3	10		—	
Manchester 3% 1941 or after	FA	97	3	1	10		—	
*Metropolitan Consd. 2½% 1920-49	MJSD	100	2	10	0		—	
Metropolitan Water Board 3% "A" 1963-2003	AO	99	3	0	7	3	0	8
Do. do. 3% "B" 1934-2003	MS	98⅜	3	0	9	3	0	10
Do. do. 3% "E" 1953-73	JJ	101xd	2	19	5	2	18	5
Middlesex County Council 4% 1952-72	MN	113½	3	10	6	2	18	7
† Do. do. 4½% 1950-70	MN	115⅛	3	17	11	3	2	4
Nottingham 3% Irredeemable	MN	96	3	2	6		—	
Sheffield Corp. 3½% 1968	JJ	106½xd	3	5	9	3	3	4
ENGLISH RAILWAY DEBENTURE AND PREFERENCE STOCKS								
Gt. Western Rly. 4% Debenture	JJ	113xd	3	10	10		—	
Gt. Western Rly. 4½% Debenture	JJ	124½xd	3	12	3		—	
Gt. Western Rly. 5% Debenture	JJ	136½xd	3	13	3		—	
Gt. Western Rly. 5% Rent Charge	FA	133½xd	3	14	11		—	
Gt. Western Rly. 5% Cons. Guaranteed	MA	133	3	15	2		—	
Gt. Western Rly. 5% Preference	MA	125⅛	3	19	8		—	
Southern Rly. 4% Debenture	JJ	112	3	11	5		—	
Southern Rly. 4% Red. Deb. 1962-67	JJ	112	3	11	5	3	6	1
Southern Rly. 5% Guaranteed	MA	133½	3	14	11		—	
Southern Rly. 5% Preference	MA	125	4	0	0		—	

*Not available to Trustees over par. †Not available to Trustees over 115.
‡In the case of Stocks at a premium, the yield with redemption has been calculated at the earliest date; in the case of other Stocks, as at the latest date.

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Seasons return; but not to me returns
Day, or the sweet approach of even or morn,
Or sight of vernal bloom, or summer's rose,
Or flocks, or herds, or human face divine;
But cloud instead and ever-during dark
Surrounds me"

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(*Continued from page* v.)

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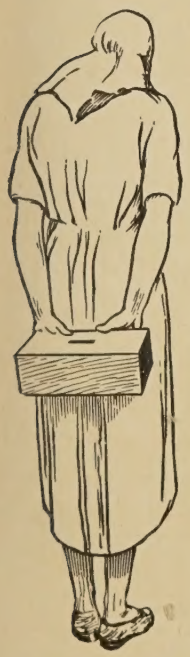

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